

THE DEATH OF SOCRATES

# CURIOSUS TRIALS & CRIMINAL CASES

*From Socrates to Scopes*

*By*

EDWARD HALE BIERSTADT

*Editor of Celebrated Trials*



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*To*

CATHERINE MACKENZIE BIERSTADT



## PREFACE

THE perfect crime—that phrase so dear to the writers of detective fiction—must, I take it, fulfill two fundamental requirements: it must completely achieve its object, and the criminal must not even be suspected. One might go further, perhaps, and say that actual perfection demands that there shall not even be any suspicion that crime has been committed; the victim must appear to have met a natural death; the jewels must seem to have been lost, not stolen. If this be true, then it must also be true that the perfect crime will never be recorded—unless the criminal tactfully leave a signed confession to be read after his death—and that is, doubtless, why it will not be found in the series of crimes contained in this volume. Here we have only imperfect criminals.

Indeed, at least some of those accused and convicted of crime in the following records were not, speaking rationally rather than legally, criminals at all. Certainly, we are not accustomed to classify Socrates as a malefactor, although it is interesting to note, as Sir John Macdonell points out, that in much later centuries and in different countries, he might easily have fared worse. He was spared torture. It is doubtful if the theory of evolution was any more dangerous to the youth of Tennessee than the doctrines of Socrates were to the youth of Athens, yet John Thomas Scopes underwent conviction in a criminal court for teaching evolution, even as late as 1925. And, as for the good Mr. Wishart in the Scotland of the 16th century, one can only conclude

that religious bigotry is invariably a damnable business. But, aside from these and such as these we have real villains in plenty. The Dumollards were as bloody wretches as ever lived; Mrs. Arden and her lover, four hundred years ago, forecast the Snyder-Grey affair with an uncanny accuracy; Königsmark should have been hanged, even if he wasn't; and even the late General Daniel E. Sickles, whose curious psychology is an engrossing study, won an interesting acquittal.

Crime is not a static quantity, nor can it be considered in absolute terms. There is actually no such thing as crime *in se*. Pascal points out that all good and evil is simply a matter of latitude and longitude, and a later commentator observes that while in Polynesia it is no crime to murder one's aged parents, in most countries it is a serious offense. Incest was in excellent standing among the ancient Egyptians, whose civilization is by no means to be despised, but it is a felony in our civilization to-day. Truly, crime is only that which communities agree, temporarily, to designate as criminal. It is criminal to sell or to manufacture intoxicants in the United States to-day, and, in New York City, it is a crime to dress or undress within ten feet of an open window. These are *malum prohibitum*, acts which are wrong merely because they are prohibited, but, as I have pointed out, *malum in se*, acts that are, supposedly, in themselves wrong, are quite as arbitrarily defined. General Sickles was acquitted of the murder he confessed to, because the opinion of the community, as represented by the jury, was that, under the circumstances, murder was not murder at all. There was no support for them in law or in fact. He did the murder; he was manifestly sane; and there is no such statute as "the unwritten law." But the community, the court of last resort, decided otherwise. Socrates suffered

death for an offense that would today be punishable merely by a fine. Broadly, I take it, one may say that any word, thought or act which runs counter to that of the herd will be construed by the community as criminal, though it may not be punishable as such. So that crime is only an idea in the mind of the herd, obsessed with the frenzy of self-preservation. The herd has decided, in truth, that might is right, and it exercises its might in characterizing all that it conceives to be inimical to it as criminal. This is natural and inevitable. The only danger is that this same instinct of self-preservation should be mistaken for the voice of God. The instinct was the same in Palestine as it is in America. The one produced the Ten Commandments; the other produced the Criminal Code of Massachusetts. There is no essential difference between the Law of Moses and the Constitution of the United States.

There will be little difference of opinion, however, concerning most of the ladies and gentlemen depicted in these pages. Most of them, it will be agreed by a timid majority of us, were very bad lots indeed, richly deserving of the punishments meted out to them. But, good or bad, they were, and are, all interesting and dramatic, and that is why they are here.

While crime itself changes little or not at all throughout the ages, the point of view of organized society on the criminal does seem to show some definite progress towards reason. Crime is monotonous: it is only punishment that is original. To see how far we have come, it is only necessary to look back a few generations. In England, at the close of the 18th century, nearly three hundred crimes called for capital punishment, and filthy prisons were filled with needy debtors. Our police systems are barely one hundred years old, and our conception of penology as any-

thing more, in effect, than sheer retaliation, is far more recent. Our interest in crime and criminals, however, remains eternal. It is natural and proper that this should be so, for, if the essence of drama is conflict, so likewise is conflict the essence of crime, the age-old conflict between the individual and the community.

Nearly every crime contains three more or less separate dramas: that which is inherent in the crime itself; that created by the chase; and that of the final trial. First, the murder; then, the hunt; last, the dock. I have endeavored here to combine as many of these elements as possible by telling the story of the crime, whenever it has been practicable to do so, in the language of the testimony given at the trial. Besides the obvious advantage gained by having the various actors appear in speaking parts, this device allows us to follow the often amusing warfare of opposing counsel, and to observe the workings of that intricate machine which man has so laborously devised in his futile attempt to protect the innocent and convict the guilty. Witness, for instance, Count Königsmark's jury of "outlandish men," given him in the effort to see that he had fair play, a most unnecessary move on that particular occasion. It has seemed to me that there might be an effective compromise between the plan of the Notable British Trials series, excellent as it is, of giving all the testimony in voluminous detail, along with the speeches of counsel, technical arguments, and the court's summation, and that of Mr. Edmund Pearson, the best hand at a murder in America!, whose splendid studies well nigh disregard the trial. I may have been wrong, but this book is, in some wise, an attempt to achieve that compromise.

It has frequently been pointed out that one of the chief faults of modern collections of trials is the presentation of

case after case that is already familiar to the reader in some other form. The deeds of Burke and Hare, Constance Kent, Niell Cream, George Joseph Smith and William Palmer, to mention only a few, are accessible in several different studies and complications, and while this is all well enough, in that individual commentators arrive at individual interpretations, it has seemed best, in this instance, to strike out into a somewhat less traveled country. So far as I know, then, none of the trials contained herein is readily available to the criminally minded reader. Certainly, so far as I know, most of them are not elsewhere in print to-day.

The sources from which my material has been gathered are printed at the end of the book. Some of the trials have been reproduced here, thieved outright from the older commentators, with hardly the change of a word, the very quaintness of their original presentation arguing in their favor; others have been thoroughly reëdited, when occasion seemed to demand it; while some have been, with the natural exception of the testimony, entirely rewritten to conform to the general plan.

It may seem that a long jump has been made from the trial of Socrates in 399 B.C. to that of George Wishart in 1545 A.D., but the gap is almost inevitable. There are very few complete records of really old trials, especially in the days when the law was in the hands of the church rather than the state. The long series of witchcraft trials, ushered in by that of Joan of Arc in 1431, has been omitted as having been dealt with elsewhere, as have the trials of Giordano Bruno in 1592 and Galileo in 1616. In any event, there is not the faintest pretense that this record is in the least complete. Here are simply a few trials that, for one reason or another, seem to stand out from their fellows as curious.

“Thus,” as says the great Lord Coke, “requesting you to

weigh these my labors in the even balance of your indifferent judgment, I submit them to your censure and take my leave."

E. H. B.

New York City,  
1928.

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## PROGRESS IN ATHENS



## PROGRESS IN ATHENS

*The Trial of Socrates Before the Legislative and Judicial Assembly of Athens; for Denying the Gods and Corrupting the Young, 399 B.C.*

WHILE a direct comparison is impossible, it is not too much to say that Socrates was the George Bernard Shaw of his day and age. He was, to use a slangy, but expressive, term, the great debunker of his times. He was a teacher rather than philosopher, and his great doctrine was that of a healthy skepticism that constantly urged inquiry, refusing to take for granted the moth-eaten precepts of the past. The religion of the state, the old Greek gods with their numerous love affairs and their periodic tinkering with mankind, he regarded not only as childish but as immoral. He sought for truth, and when he could not find it in his fellows, he said so. No wonder that he died at the hands of an outraged community!

The criminal charges that were brought against Socrates in 399 B.C., when he was about seventy, were two in number. He was charged first, with denying the gods recognized by the state, and introducing instead of them strange divinities; second, with (a) teaching his associates to despise the institutions of the state, and especially election by lot; (b) numbering among his associates Critias and Alcibiades, the most dangerous of the representatives of the oligarchical and democratic parties; (c) teaching the young to disobey their parents and guardians, and to prefer his own authority to theirs; (d) being in the habit of quoting mischievous

passages from Homer and Hesiod to the prejudice of public morality. In spite of the specifications, the charge is very vague, and by no means difficult to answer. Indeed, the fact that Socrates' defense, as reported by Plato, is so irrelevant to the accusation, when the charges were not hard to disprove, leads one to believe that he had no hope of justice even though he were able to clear himself.

It is true, Socrates did deny the gods of the state, but he raised up no new gods. Indeed, at the trial it will be seen that this charge was abandoned and that he was accused of atheism. And, if he taught his associates to despise the institutions of the state, he also taught implicit obedience to those same institutions. After his own condemnation he might have escaped, but for the fact that he scorned to disobey the laws that he detested. Socrates would have fought Prohibition tooth and nail; but he would have obeyed it. Critias and Alcibiades were his friends, but no one had been more outspoken than he in vilification of their misdeeds. As for teaching children to disobey their parents, it was hardly Socrates' fault that, through his teaching, children were brought to realize the puerility of certain parental superstitions. Moreover, the very parents were in court during the trial, and the prosecution, challenged by Socrates, dared not call on them to testify against him. In fact, they were quite ready to testify in his favor. So far as the final charge, the quotations from Homer and Hesiod, was concerned, it is not clear just what passages were intended, but it seems probable that Socrates supported his contention that the old gods were no better than they should be by illustrations from these sources. Undoubtedly, if the state religion were to be considered, Socrates was guilty of blasphemy. Undoubtedly, he was a disturbing

influence in a society that preferred to think along old established lines instead of thinking for itself. It was so then, and it is so to-day. There is no effort that man is so unwilling to make as mental effort, and this because he is not only inherently lazy but inherently timid into the bargain. Children are not taught to think; they are taught what others have thought before them. It was fortunate for Socrates that nothing worse than the hemlock awaited him. If he had lived fifteen hundred years later he would probably and literally have been torn limb from limb.

Moreover, this was peculiarly not a time when original thinking was safe in Athens. The oligarchy had quite recently been overturned and democracy established. The state was uncertain, unsure of itself. The inevitable persecutions attendant upon political overthrows had harassed the populace. Nerves were jumpy. There had to be an outlet for the usual post-war hysteria. Socrates was selected as the victim. He was teaching nothing new. He had been lampooned years before in the *Clouds* of Aristophanes, and had been sneered at and mocked all his life by the righteous majority. Socrates represented the stock hatred of the mass mind; and the herd unbottled the accumulated resentment of years in ridding itself of one whom it, unconsciously, recognized as its superior.

As we know them to-day, there were no courts in the Athens of 399 B.C. There were no trained, professional judges. Each year six thousand citizens, not less than thirty years old, were chosen by lot. These sat in ten assemblies, which varied in number from two hundred to two thousand. Those who judged Socrates apparently numbered 501. It was not a judicial bench; it was not a jury; it was a crowd. It was more like an impeachment before a legislative assem-

bly than a trial. Likewise, there were no public prosecutors. The accusation was brought by private citizens who made their charge, and argued their case. If the prosecutor failed to obtain a certain percentage of the votes of the assembly, he was liable to pay a heavy fine, obviously a safeguard against malicious prosecution. In this instance there were three prosecutors, Anytus, Meletus and Lycon. Any three citizens would have done as well.

First the prosecutors spoke in turn, and then the witnesses were called. What line the prosecution took, and what the testimony was, however, can only be inferred from Socrates' reply, given in Plato's *Apology*, and scholars are still disputing the question of Plato's accuracy. Plato was said to have been present during the defense, and it seems probable that his version is accurate in essence without being literal in detail. Socrates began with an apology for the informality of his style. He was used to dealing with facts; not with rhetoric. Next, he pointed out that he had been so blackguarded for years past that his present reputation consisted largely of the abuse of his enemies. And then he embarked on his real defense. Of this there is little to say, except that he was forthright to the point of indiscretion. He had patiently sought for a single man in Athens who possessed more of the truth than he, and he had not found him. He had found only men who knew no more than himself, and who thought they knew much more than they did, thus proving their lack of wisdom. He had passed his life in exposing shams, and that was why he was hated. Then, he questions Meletus:

Come hither, Meletus, and let me ask a question of you. You think a great deal about the improvement of youth?

Yes, I do.

Tell the judges, then, who is their improver; for you must know, as you have taken the pains to discover their corrupter, and are citing and accusing me before them. Speak, then, and tell the judges who their improver is. . . . I observe, Meletus, that you are silent and have nothing to say. But is not this rather disgraceful, and a very considerable proof of what I was saying, that you have no interest in the matter? Speak up, friend, and tell us who their improver is.

The laws.

But that, my good sir, is not my meaning. I want to know who the person is; who, in the first place, knows the laws?

The judges, Socrates, who are present in court.

What! Do you mean to say, Meletus, that they are able to instruct and improve youth?

Certainly, they are.

All of them, or some only, and not others?

All of them.

By the goddess Here, that is good news! There are plenty of improvers, then. And what do you say of the audience—do they improve them?

Yes, they do.

And the senators?

Yes, the senators improve them.

But, perhaps the ecclesiasts corrupt them? Or do they too improve them?

They improve them.

Then, every Athenian improves and elevates them; all with the exception of myself; and I alone am their corrupter? Is that what you affirm?

That is what I stoutly affirm.

So far Socrates had it in his own hands, but from here on the examination is less happy, for the lure of dialectics

proved too much for Socrates and he plunged happily from one sophistry to another. If he had really argued his case, it is inconceivable that he would not have demolished both the flimsy accusation and Meletus, who doubtless was, along with his two colleagues, a Babbitt-like nonentity, hired by the enemies of Socrates to trump up a case against him.

Leaving Meletus, Socrates embarked upon a strange plea for his life. He asked for life, not for his own sake but for that of the state. His seventy years had been passed in seeking the truth and in instructing others. Such a man could ill be spared to Athens. All this was no more than the literal truth, but it was not calculated to help the accused with a hostile court. Socrates ended his plea, if it can be called that, by telling the judges that he appealed to their reason, not to their emotions. He had not brought a weeping wife and children into court, as some of his judges themselves had done, and for this he should be credited. It was one long flow of dignified reason and studied insult. Either Socrates knew that he had no chance, and that nothing he said mattered, or he simply did not care. There must have been many interruptions during the trial; witnesses heard and refuted; comments from the crowd and from the judges; the inevitable byplay of a trial; but, if there was, it is lost to us forever.

The Court took its vote, and out of 501 judges, 281 voted against the accused. A change of 31 votes would have saved Socrates.

Then, the matter of punishment was to be considered. It must be assumed that the prosecutors spoke and asked the death penalty, but there is no record to show this. Socrates, however, as was his right, proposed a counter penalty. At first, true to his principle of no compromise,

Socrates proposed that the state vote him a pension for life, but then, probably because friends insisted, he suggested a fine of thirty minæ. Socrates had now not only braved the judges, but had put them in a quandary, in that it was their duty to decide between the two penalties proposed, and that of Socrates was, as it was designed to be, absurd. There was nothing for it but to vote for Death. It was done. Socrates said little more, only that all death was not evil, and that he hoped the state would punish his sons if they ever preferred wealth to virtue or if they ever pretended to be what they were not. The trial was over.

Socrates' execution was postponed during the voyage of the sacred ship to and from Delos and, according to Plato, in this interval Socrates was urged by his friends to escape by means of plans which they had already perfected. Socrates refused. He was willing to give his life to prove the fallacy of the laws, but he would not evade them. It was, in effect, the doctrine of philosophical evolution as opposed to revolution, and Socrates seems to have felt that to escape would be to revolt actively against the law.

Finally, the sacred ship arrives, and Socrates is to die the following day. A number of his friends gather together with him at the end, so that he shall not die alone. Our only record is that of Plato, and Plato was not himself present at the execution. His account, however, is doubtless approximately accurate. An abridged version of the dialogue, the *Phædo*, will carry the narrative:

Were you yourself, Phædo, in the prison with Socrates on the day when he drank the poison?

Yes, Echecrates, I was.

I wish that you would tell me about his death. What did he

say in his last hours? We were informed that he died by taking poison, but no one knew anything more, for no Phliasian ever goes to Athens now, and a long time has elapsed since any Athenian found his way to Phlius, and therefore we had no clear account.

Did you not hear of the proceedings at the trial?

Yes; some one told us about the trial, and we could not understand why, having been condemned, he was put to death, as appeared, not at the time, but long afterwards. What was the reason of this?

An accident, Echecrates. The reason was that the stern of the ship which the Athenians send to Delos happened to have been crowned on the day before he was tried.

What is this ship?

This is the ship in which, as the Athenians says, Theseus went to Crete when he took with him the fourteen youths, and was the saviour of them and of himself. And they were said to have vowed to Apollo at the time, that if they were saved they would make an annual pilgrimage to Delos. Now this custom still continues, and the whole period of the voyage to and from Delos, beginning when the priest of Apollo crowns the stern of the ship, is a holy season, during which the city is not allowed to be polluted by public executions; and often, when the vessel is detained by adverse winds, there may be a very considerable delay. As I was saying, the ship was crowned on the day before the trial, and this was the reason why Socrates lay in prison and was not put to death until long after he was condemned.

What was the manner of his death, Phædo? What was said or done? And which of his friends had he with him? Or were they not allowed by the authorities to be present? And did he die alone?

No; there were several of his friends with him.

If you have nothing to do, I wish that you would tell me what passed, as exactly as you can.

I have nothing to do, and will try to gratify your wish. For

to me there is no greater pleasure than to have Socrates brought to my recollection; whether I speak myself or hear another speak of him. . . . You must understand that we had previously been in the habit of assembling early in the morning at the court in which the trial was held, and which is not far from the prison. There we remained talking with one another until the opening of the prison doors (for they were not opened very early) and then went in and generally passed the day with Socrates. On the last morning the meeting was earlier than usual; this was owing to our having heard on the previous evening that the sacred ship had arrived from Delos, and therefore we agreed to meet very early at the accustomed place. On our going to the prison, the jailer who answered the door, instead of admitting us, came out and bade us wait and he would call us. "For the eleven," he said, "are now with Socrates; they are taking off his chains, and giving orders that he is to die to-day." He soon returned and said that we might come in. On entering we found Socrates just released from chains, and Xanthippe, whom you know, sitting by him, and holding his child in her arms. When she saw us she uttered a cry and said, as women will: "Oh, Socrates, this is the last time that either you will converse with your friends, or they with you!" Socrates turned to Crito and said, "Crito, let some one take her home." Some of Crito's people accordingly led her away, crying out and beating herself. And when she was gone, Socrates, sitting upon the couch, began to bend and rub his leg, saying as he rubbed, "How singular is the thing called pleasure, and how curiously related to pain, which might be thought to be the opposite of it; for they never come to a man together, and yet he who pursues either of them is generally compelled to take the other. They are two, and yet they grow together out of one head or stem; and I cannot help thinking that if *Æsop* had noticed them, he would have made a fable about God trying to reconcile their strife and when he could not, he fastened their heads together; and this is the reason why when one comes the other

follows, as I find in my own legs pleasure comes following after the pain in my leg which was caused by the chain."

There follows a long philosophical discussion in which life and death, memory and the soul, immortality and rebirth form the chief ingredients. This lasts all day and then, with the coming of dusk, comes the jailer:

Now the hour of sunset was near, for a good deal of time had passed while he was within the bath. When he came out, he sat down with us after his bath, but not much was said. Soon the jailer, who was the servant of the eleven, entered and stood by him saying:—To you, Socrates, whom I know to be the noblest and gentlest and best of all who ever came to this place, I will not impute the angry feelings of other men, who rage and swear at me, when, in obedience to the authorities, I bid them drink the poison—indeed, I am sure that you will not be angry with me; for others, as you are aware, and not I, are the guilty cause. And so fare you well, and try to bear lightly what must needs be; you know my errand.—Then, bursting into tears, he turned away and went out.

Socrates looked at him and said: I return you good wishes and will do as you bid. Then, turning to us, he said, How charming the man is: since I have been in prison he has always been coming to see me, and at times he would talk to me, and was as good as could be to me, and now see how generously he sorrows for me. But we must do as he says, Crito; let the cup be brought, if the poison is prepared: if not, let the attendant prepare some.

Yet, said Crito, the sun is still upon the hilltops, and many a one has taken the draught late, and after the announcement has been made to him, he has eaten and drunk, and indulged in sensual delights; do not hasten then, there is still time.

Socrates said: Yes, Crito, and they of whom you speak are right in doing thus, for they think that they will gain by the delay;

but I am right in not doing thus, for I do not think I should gain anything by drinking the poison a little later; I should be sparing and saving a life which is already gone; I could only laugh at myself for this. Please, then, to do as I say, and not to refuse me.

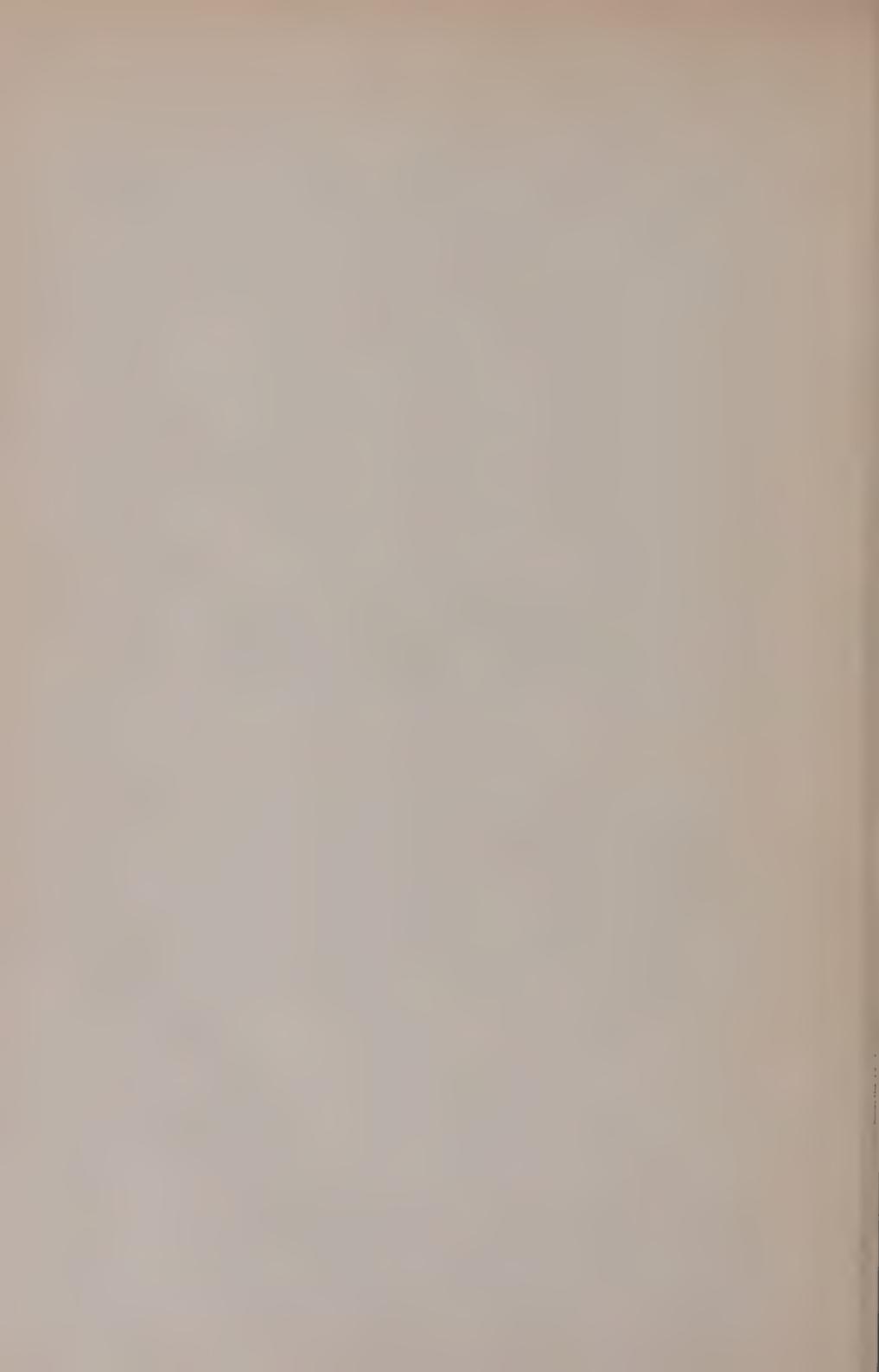
Crito, when he heard this, made a sign to the servant; and the servant went in, and remained for some time, and then returned with the jailer carrying the cup of poison. Socrates said: You, my good friend, who are experienced in these matters, shall give me directions how I am to proceed. The man answered: You have only to walk about until your legs are heavy, and then to lie down, and the poison will act.—At the same time, he handed the cup to Socrates, who in the easiest and gentlest manner, without the least fear or the change of color or feature, looking at the man with all his eyes, as his manner was, took the cup and said: What do you say about making a libation out of this cup to any god? May I, or not? The man answered: We only prepare, Socrates, just so much as we deem enough.—I understand, he said: yet I may and must pray to the gods to prosper my journey from this to that other world—may this, then, which is my prayer, be granted to me. Then, holding the cup to his lips, quite readily and cheerfully, he drank off the poison. And, hitherto, most of us had been able to control our sorrow; but now when we saw him drinking, and saw too that he had finished the draught, we could no longer forbear, and in spite of myself my own tears were flowing fast; so that I covered my face and wept over myself, for certainly I was not weeping over him, but at the thought of my own calamity in having lost such a companion. Nor was I the first, for Crito, when he found himself unable to restrain his tears, had got up and moved away, and I followed; and at that moment, Apollodorus, who had been weeping all the time, broke out into a loud cry which made cowards of us all. Socrates alone retained his calmness: What is this strange outcry? he said. I sent away the women mainly in order that they might not offend in this way, for I have heard that a man should die in peace. Be quiet then, and

have patience.—When we heard that, we were ashamed and restrained our tears; and he walked about until, as he said, his legs began to fail, and then he lay on his back, according to the directions, and the man who gave him the poison now and then looked at his feet and legs; and after a while he pressed his foot hard, and asked him if he could feel; and he said, No; and then his leg, and so upwards and upwards, and showed us that he was cold and stiff. And he felt then himself, and said: When the poison reaches the heart, that will be the end. He was beginning to grow cold about the groin, when he uncovered his face, for he had covered himself up, and said (they were his last words)—he said: Crito, I owe a cock to Asclepius; will you remember to pay the debt? The debt shall be paid, said Crito; is there anything else?—There was no answer to this question; but in a minute or two a movement was heard, and the attendants uncovered him; his eyes were set, and Crito closed his eyes and mouth.

Such was the end, Echecrates, of our friend, whom I may truly call the wisest, and justest, and best of all men whom I have ever known.

Truly, Socrates seems to have merited the best his friends could say of him. And yet, as I have said, if the same man had lived fifteen centuries later he would have paid the same penalty for the same offense—except that he would have been tortured, disemboweled and burned alive. The progress of civilization seems sometimes an extremely odd affair.

# BLOOD OF THE MARTYRS



## BLOOD OF THE MARTYRS

*The Trial of George Wishart, Burnt for Heresy, in the Third Year of the Reign of Mary, Queen of Scotland, A.D. 1545.*

THIS gentleman was of the family of Pittdrow, in the county of Merns; he was a person of great knowledge, powerful eloquence, and endowed with many other rare virtues. He had spent some time in the university of Cambridge, and out of a desire to promote what he imagined to be the truth in his own country, he returned home in 1544; and residing chiefly in the towns of Dundee and Montrose, he publicly preached there with great applause and good success.

Cardinal Beaton, Archbishop of St. Andrews, was the man that then bore all the sway in ecclesiastical matters in Scotland, who being incensed that Wishart had so many followers, forbade the people of Dundee to receive him; whereupon one Robert Mill, a man of great authority in that town, being either corrupted by the cardinal's presents, or fearing some calamity might befall the place upon his account, one day, as he had finished his sermon, openly prohibited him to come any more amongst them. Wishart, after a little pause, turning himself to Mill, said, "God is my witness, that I ever mind your comfort, and not your trouble, which to me is more grievous than to yourselves: But sure I am, to reject the word of God, and to send away his messengers, is not the way to save you from trouble: when I am gone, God will send you messengers, who will

not be afraid either of burning or banishment. I have, with the hazard of my life, remained amongst you preaching the word of salvation, and now since you yourselves reject me, I must leave my innocence to be declared by God: if it be long well with you, I am not led by the spirit of truth; and if unexpected trouble befall you, remember this is the cause, and turn to God by repentance, for he is merciful."

The earl marshal, and some other noblemen, who were present at the sermon, pressed him very much to go with them into the north, but he choosing to go into the west parts of the kingdom, his sermons were there attended with a great concourse of people; the Archbishop of Glasgow made a journey on purpose to the town of Ayr, in order to apprehend him; but Alexander, Earl of Glencairne, hearing of the archbishop's intentions, hastened to the town, and offered the use of the church to Wishart, wherein the archbishop was preparing to preach himself, but he declined that; and being desired the Sunday following to preach in the church of Macklin, to prevent which, the sheriff of Ayr put in soldiers over night, he would not suffer his friends to enter the church by force, saying, "It is the word of peace that I preach unto you, the blood of no man shall be shed for it this day; Christ is as mighty in the fields as in the church, and he himself, when he lived in the flesh, preached oftener in the desert, and upon the seaside, than in the temple of Jerusalem." So walking along the edge of the moor on the south side of Macklin, he preached to the multitude for three hours and above; and all the while he continued in those places teaching daily with good success.

After he had remained about a month in these parts, he was informed that the plague made great ravages in the town of Dundee, where it began the fourth day after he

had left it; this moved him to return thither, and the morning after his arrival he gave intimation he would preach; and because the sickness still raged, he chose the head of the East Gate, the infected persons standing without, and the rest within; his text was this: He sent his word and healed them, and delivered them from their destruction: And having made an excellent discourse, suitable to the occasion, and the deplorable circumstances of the people, he continued amongst them all the time the sickness lasted, and did not suffer the poor, who were destitute of subsistence, to want necessaries any more than the rich.

It happened while Mr. Wishart continued here, that one John Weighton, a priest, formed a design to murder him as he came down from the place where he was wont to preach; but being prevented, and apprehended with a weapon in his hand, a tumult arose, the sick without the gates rushed in, and cried that the assassin might be delivered to them; but Wishart, taking the priest in his arms, desired them to be quiet, saying, “He has done no harm, only he has shewed us what we have to fear for the future”; and thus he saved the man from destruction.

The plague decreasing, he prepared to go to Edinburgh; but, because he had not seen the people of Montrose for a long time, and was doubtful whether he should ever return, he determined first to go thither. While he tarried there, he received a letter from Lord Kenneir, in the shire of Fife, to acquaint him with a sudden sickness that had seized him, and to desire he would lose no time to come to him: he presently began his journey, accompanied by some honest citizens, who would needs attend him part of his way. They had not gone above a quarter of a mile, when he suddenly stopped, saying to the company, “I am forbid to go this

journey; will some of you be pleased to ride to yonder place," pointing with his finger to a little hill, "and see who you can find; for I apprehend there is a plot against my life." So returning to the town, those that went forward to the place found about threescore horsemen laid to intercept him, by which he came to understand that the letter was counterfeited. They declaring, at their return, what they had seen, he said, "I know I shall end my life in the hands of that man (meaning the cardinal), but it will not be after this manner."

Two or three days after, he began his journey for Edinburgh, notwithstanding the persuasions of the Lord Drummond, and others, to the contrary, and lodging that night at Inner Gowry, he was observed to get out of his bed a little after midnight, and to go into the garden, where, after a turn or two, he fell upon his knees, sighing and groaning mightily, then prostrating himself upon the ground, lay almost an hour in that posture, weeping and praying, and then returned to his rest. William Spalding and John Watson, who lay in the same room, and had observed whither he went, asked him, as if they had known nothing of the matter, where he had been, but he made them no answer; but inquiring anew in the morning, what made him rise in the night, and the reason of his lamentation, for they told him all that they had seen and observed, he answered, with a dejected countenance, "I wish you had been in your beds, which had been more for your ease, for I was scarce well employed"; but they desiring him to satisfy them farther, and to impart some comfort to them, he said, "I will tell you that I assuredly know that my traveling is near at an end, and therefore pray to God for me, that I sink not when the battle waxeth hot": upon those words they burst into

tears, and said, it was to them a small comfort. Whereupon he replied, "God will send you comfort after me; this realm shall be illuminated with the light of Christ's gospel, as clearly as ever any realm was since the days of the Apostles: the house of God shall be built in it; yea, it shall not lack the very copestone, whatever its enemies shall devise to the contrary; neither shall this be long a doing; for there shall not many suffer after me. The glory of God shall appear, and truth shall once triumph in despite of the devil; but, alas! if the people become unthankful, the plagues and punishments which shall follow will be fearful and terrible."

Having after this preached at Leith, and several other places, his last sermon was at Haddington; here having received a letter from the gentlemen in the West, wherein they acquainted him they could not keep the diet appointed at Edinburgh, he said to John Knox, who then attended him, "I am weary of the world, since I perceive men to grow weary of God"; however, he went into the pulpit, and rebuking the people of that town for their contempt of the gospel, he told them, "That strangers should possess their houses, and chase them from their habitations": which came to pass in a short time. He also took notice of the short time he had to live, and told them his death was nigher than they imagined. He bid his acquaintance there, next morning, such a farewell as if it were forever, and by reason of the greatness of the frost, went on foot to Ormeston, and John Knox being desirous to accompany him, he desired him to go back, saying, "One is enough at this time for a sacrifice." Being arrived at Ormeston, the house wherein he lay was beset about midnight with a body of horse, sent by the regent to take him; but the Laird of Ormeston refusing to deliver him, hoping he might find a way to let him make his

escape, the Earl of Bothwell, sheriff of the county, came and required he should be put into his hands, promising that his life should be safe, and that it should not be in the cardinal's power to injure him: the laird having acquainted him with it, he desired him to open his gates, saying, "The blessed will of God be done." The earl entering the house, Wishart said to him, "My lord, I am pleased that so honorable a person as you are, receives me this night, in the presence of these noblemen, for I am assured your honor will not permit anything to be done to me out of the order of the law; I am not ignorant that the law, which they who seek my life use, is nothing but a corruption and a cloak to shed the blood of God's saints; yet I less fear to die openly, than to be murdered in secret." The earl answered, "I shall not only preserve your body from violence, if any be intended against you, but I will promise you, on my honor, in the presence of these gentlemen, that neither the earl of Arran, the regent, nor the cardinal, shall be able to hurt you; and that I shall keep you in my own power, till either I make you free, or bring you back to the place where I now receive you."

Being upon this promise delivered into the earl's own hand, he departed with him for Elphinstone, where the cardinal was attending the success. From thence he was conveyed to Edinburgh, but afterwards brought back to the castle of Hales, the earl's principal seat in Lothian; but the Queen-mother, Mary of Lorraine, of the house of Guise, at the cardinal's desire, being very earnest with the earl to have him sent back to the castle of Edinburgh, he, out of respect to his promise, refused it for some time; but at last being overcome by her solicitation, he gave way to it: so the poor man was recommitted to Edinburgh Castle, and, after

a short stay there, conveyed to St. Andrews, where he continued a prisoner to the day of his suffering.

The cardinal, thinking it not expedient to protract his trial, wrote to the prelates of the kingdom to meet on the 27th of February at Glasgow. The archbishop of that place in the assembly delivered his opinion, that it would be expedient to get a commission from the regent, to some man of quality that might execute justice, lest all the burden should lie upon them; to which the cardinal readily agreed, upon a supposition that the regent would make no scruple of it. Nor, indeed, had he made any, if David Hamilton of Preston, who knew their intentions, had not seriously dissuaded him from it, advising him rather to use his authority in defense of God's servants, than to arm their adversaries with his power.

The earl being moved with the arguments of Hamilton, answered the cardinal, That he would do well not to precipitate this man's trial, but to put the same off till he himself arrived; for as to his part, he would not give his consent to have him put to death, before the matter was well examined; and if the cardinal offered to do otherwise, he would make protestation, that this man's blood should be required at his hands. His answer perplexed the cardinal very much, for he knew that delays would be a means to save the prisoner; and to put the matter into a way of thorough examination, he foresaw, would still be more dangerous: he therefore replied, in a great passion, That he had not wrote to the regent as though he had any dependence in that case upon his authority, but from a desire he had that the condemnation of heretics might be carried on with an appearance of public consent, which since he could not ob-

tain, he would do himself what he thought was most proper on such an occasion.

Thus he ordered a process, or citation, to be issued out, requiring Mr. George Wishart to make his appearance next morning, to answer for his seditious and heretical doctrines. Wishart having received the summons, said, "The cardinal had no occasion to summons me, for I am in his hands, and kept fast in irons, so as he may compel me to answer at what time he pleases; but to manifest," continued he, "what sort of men you are, it's well done to keep to your forms and constitutions." The next day the cardinal and prelates being met in the abbey church, the prisoner was brought before them by the captain of the castle, and then the sub-prior, whose name was John Winram, a man of good learning, and one who secretly favored the reformation, went up into the pulpit, as he had been commanded, and taking for his text our Saviour's words in the thirteenth of St. Matthew's gospel, concerning the good seed, which he interpreted to be the word of God, he said, "Heresy was the ill seed"; and he defined it to be a false opinion, directly opposing the word, and defended with obstinacy. Then coming to speak of the causes of heresy, "The main one," he said, "was the ignorance and negligence of those who had the cure of souls, and neither understood the word of God, nor could use the same to the convincing of false teachers, and the reducing of those who are gone astray." In the latter part of his sermon, speaking how heresy should be discerned, he said, "That as the goldsmith knows the fine gold from the counterfeit by the touchstone, so was heresy discerned by the true, sincere, and undefiled word of God": and so he concluded, "that heretics ought to be punished, and might lawfully be put to death by the magistrate."

The prisoner was then placed in a seat erected for that purpose, and over against him, Master John Lauder, a priest, in another; who having a long scroll of paper in his hands, containing the articles laid to his charge, used many reproachful words; all which the other heard very patiently, not once moving or changing his countenance. Being required to answer, before he would utter a word, he bowed his knees, and made his prayer to God; then standing up, entreated them, in a most humble manner, to suffer him to repeat the sum of the doctrine which he had taught since his coming into Scotland, which he said was nothing but what the ten commandments of God, the twelve articles of the christian faith, and the Lord's Prayer contained. But the prelates prohibiting all discourses, required him to answer directly, yea or nay, fearing if liberty was allowed him to speak, he should bring over some of the auditors to his party.

The prisoner perceiving he could not be heard, demanded an equal and impartial judge; upon which Lauder replied, "That the cardinal was more than a competent judge for him"; and then he enumerated all his titles, saying, he was Archbishop of St. Andrews, Bishop of Meropois, Chancellor of Scotland, Commendatory of Aberbrothock, *legatus natus, legatus à latere* and the second person in the kingdom. Wishart calmly answered, "I do not condemn my lord cardinal, but I desire the word of God to be my Judge, and my Lord Regent, since I am his prisoner." At these words some people that stood by cried out, "Like man, like judge"; meaning that the regent was a heretic like himself. Then would the cardinal have proceeded to pronounce sentence without any further process; but being advised to let the accusation be read, and to hear what the prisoner could say, lest people should think him wrongfully condemned, he

commanded the priest to read the articles distinctly, and to hear his answer to every one of them severally. They were eighteen in number, and they are these which here follow:

ARTICLE I.—“Thou art a heretic and a traitor, a deceiver of the people, who despisest holy church, and in like case condemnest the lord-regent’s authority. And this we know for certain, that when thou didst preach in Dundee, and was charged by his authority to desist, nevertheless, thou wouldest not obey, but didst persevere in the same; and, therefore, the Bishop of Brothen cursed thee, and delivered thee into the devil’s hands, and gave thee in commandment thou shouldst preach no more; notwithstanding which, thou didst obstinately continue.”

WISH.—“My lords, I have read in the Acts of the Apostles, that it is not lawful to desist from preaching the gospel for the threats and menaces of men; and, therefore, it is written, we should rather obey God than men. I have also read, in the Prophet Malachi, ‘I shall curse your blessing, and bless your cursings’; believing, firmly, that the Lord will turn your cursing into blessings.”

II.—“Thou, false heretic, didst say, that the priest, standing at the altar saying mass, was like a fox wagging his tail in July.”

WISH.—“My lords, I did not say so; these were my sayings: ‘the outward motion of the body, without the inward motion of the heart, was nought else but the playing of an ape, and not the true serving of God; for God is a searcher of the secrets of men’s hearts; therefore, those that will truly adore and honour him, must honour him in spirit and in truth.’ ”

Then the accuser stopped his mouth with another article:

III.—“Thou false heretic, preachest against the sacraments, saying, that there were not seven sacraments.”

WISH.—“My lords, with your leave, I never preached about the number of the sacraments, whether they were seven or eleven; so

many as are instituted by Christ, and shewn us in the Gospel, I openly profess. Except it be the word of God I dare affirm nothing."

IV.—"Thou, false heretic, hast openly taught, that auricular confession is not a blessed sacrament; and thou sayest that we should only confess to God, and to no priest."

WISH.—"My lords, I say that auricular confession, seeing it has no promise of the gospel, cannot be a sacrament. Of the confession to be made to God, there are many evidences in scriptures; as when David said, 'I thought I would acknowledge mine own iniquity, against myself, unto the Lord, and he forgave the punishment of my sin.' Psal. 32. Here confession signifies the secret acknowledgement of my sins before God. When I exhorted the people in this manner, I reproved no manner of confession. And farther, St. James says,—'Acknowledge your faults one to another, and pray one for another, that you may be healed.'"

As he uttered these words, the bishops and their associates exclaimed,—"Do you not see how he colours his discourses, that he may beguile and seduce us to his opinions?"

V.—"Thou, heretic, didst openly say, that it was necessary every man should know and understand his baptism, contrary to general counsels, and the state of holy church."

WISH.—"My lords, I believe there are none here so simple, as to traffic with a Frenchman, or other foreigner, but he must first know and understand the terms or promises made, or proposed by him. In like manner, I wish we might understand what promises we make to God, in the name of the infant, at his baptism; and this is the reason, I believe, you have the ceremony of confirmation."

"Then," said Mr. Bleiter, the captain, "the devil and the spirit of error is within him"; to which a child presently

replied, "The devil cannot speak such words as yonder man does."

VI.—"Thou, heretic and traitor, didst say, that the sacrament of the altar was but a piece of bread baked upon the ashes, and nothing else; and that all that is there done is but a superstitious rite against the command of God."

WISH.—"Oh, Lord, God! such manifest lies and blasphemies the scripture does not teach you. As to the sacrament of the altar, I never taught anything, my lords, contrary to scripture, which, by God's grace, I shall make out this day, being ready to suffer death for it.

"The lawful use of the sacrament is most acceptable to God, but the great abuse of it is very detestable; but what occasion they have to say such words of me, I shall shortly shew your lordships. I once chanced to meet with a Jew, as I was sailing upon the Rhine, of whom I inquired the reason of his obstinacy, in not believing that the true Messiah was come, seeing they had found all the prophecies fulfilled concerning him. Proceeding further, and urging that the sceptre was taken from Judah, and many other instances from the scripture, to prove that the Messiah was come, and that he was Jesus of Nazareth. The Jew made this answer:—  
"When the Messiah comes, he shall restore all things, and he shall not abrogate the law given to our ancestors, as you do. For why, we see the poor amongst you perish with hunger, yet you have no compassion on them; but amongst us, Jews, though we are poor, there are no beggars to be found.

"Again, 'tis forbid by the moral law to form any images of things in Heaven above, or in the earth beneath, or in the sea under the earth, but one God only is to be honoured; but your sanctuaries and churches are full of idols.

"Thirdly, you pay adoration to a piece of bread baked upon the ashes, and say this is your God.' I have only repeated here the sayings of the Jew, which I never affirmed to be true."

Then the bishops shook their heads, and would not hear him explain himself any farther that way:

VII.—“Thou, false heretic, didst say, that extreme unction was not a sacrament.”

WISH.—“My lords, I never preached anything about extreme unction, whether it was a sacrament or not.”

VIII.—“Thou didst, as a false heretic, say, that holy water is not so good as wash, or such like: thou didst condemn conjurations, and said holy church’s cursings availed not.”

WISH.—“As to the strength or virtue of holy water, I never meddled with it in my doctrine. I would approve of conjurations and exorcisms, if they were agreeable to the word of God; but seeing, in reality, they are not, I disapprove of them.”

IX.—“Thou false heretic and renegado, didst say, that every layman is a priest, and the like; and that the pope had no more power than any other man.”

WISH.—“My lords, I preached nothing but the word of God; I remember I have somewhere in St. John and St. Peter read, ‘He has made us kings and priests’: again, ‘He has made us a royal priesthood’; and, therefore, I did affirm that any man who was skilled in the word of God, and the truth of Jesus Christ, had his power given him from God, and not from the power and violence of men, but by virtue of God’s word, which is called the power of God, according to the plain testimony. Further, I say, that no unlearned man, unskilled in the word of God, and inconstant in the faith, whatever condition or order he is of, has power to bind or loose, seeing he wants the instrument by which he binds or looses, which is the word of God.”

When he had said these things, all the bishops laughed and reviled him; which being observed by the prisoner, “Do you laugh,” said he, “my lords; though these expressions are scorned and derided by your lordships, I must tell you

that they have a very great weight with and are much valued by me; because I am not only concerned in them myself, but it is the honor and glory of God that is."

X.—"Thou didst say, like a false heretic, that a man has no free-will, but is like the stoics, who say that it is not in man's will to do anything, but that all concupiscence and desire comes from God, be it what it will."

WISH.—"My lords, indeed I never said so: I say that as many as firmly believe in Christ, to them liberty is given, conformable to the saying of St. John, 'If the Son make you free, then shall you verily be free'; on the contrary, 'as many as do not believe in Christ Jesus, they are slaves to sin. He that sinneth is bound under sin.' "

XI.—"Thou, false heretic, didst say, 'tis as lawful to eat flesh on a Friday as on a Sunday."

WISH.—"May it please your lordships, I have read in the Epistles of St. Paul, 'That he that is clean, unto him all things are clean'; on the contrary, 'to the unclean all things are unclean. A faithful, clean, and holy man, by the word sanctifies the creature of God; but the creature makes no man acceptable to God; so that a creature cannot sanctify any unpure and unbelieving man; but to the faithful man all things are sanctified by the word of God and prayer.' "

Having spoken these things openly in the court, the bishops and their adherents said, "What need have we of any witnesses against him? Has he not here openly spoke blasphemy?"

XII.—"Thou, false heretic, didst say, that we should not pray to saints, but to God only: tell us whether thou hast said this or not? Speak quickly."

WISH.—"My lords, there are two things worthy of note: the

one is certain, the other is uncertain. It appears, plainly and certainly, in scripture, that we should worship and honour one God, pursuant to the first commandment, 'Thou shalt worship no other Gods but me'; but as for praying to and honouring of saints, it is much doubted by many persons, whether they do hear the invocations made to them or not. Therefore, in my preaching, I exhorted all men alike, to leave the uncertain way, and to follow that which Christ our master has taught us: He is our only Mediator, and makes intercession for us to God the Father: He is the door by which we must enter; he that enters not in by this door, but climbs another way, is a thief and a murderer: He is the Truth and the Life; he that goes out of this way, doubtless shall fall into the mire, yea, verily, is fallen already into it. This was the tenor of my doctrine, which I have ever followed. Indeed, I have taught openly, and not in corners, what I have read and heard in the word of God; and if your lordships will now hear me, ye shall bear witness of the same. I dare not be so bold as to affirm anything but what is consonant to the word of God."

XIII.—"Thou, false heretic, hast openly preached, that there is no purgatory, and that it is an imaginary thing, that any man after this life should be punished in purgatory."

WISH.—"My lords, as I have oftentimes already said, that I dare affirm nothing without the express words and testimony of scripture, I have frequently, and at divers times, read over the Bible, and yet never once found such a word as purgatory, nor any one place of scripture applicable thereunto; and, therefore, I have ever been ashamed to preach up a thing which I could never meet with in the scripture": and directing himself to Mr. John Lauder, his accuser, "If you can produce any text of scripture, by which you may prove there is any such place, produce it here before this auditory." (But Lauder went on with his articles.)

XIV.—"Thou, false heretic, hast preached openly against the vows of monks, friars, nuns, and priests; saying, that whoever tied themselves up to such-like vows, they vowed themselves into a state

of damnation; moreover, that it was lawful for priests to marry, and not to live singly."

WISH.—"Truly, my lords, I have read in the gospel, that there are three sorts of eunuchs; that some are so from their mother's womb; that others are castrated by men; and that the third have made themselves eunuchs for the sake of the kingdom of Heaven: verily, I say, these men are blessed in the word of God; but as for many that have not the gift of chastity, and for the sake of the gospel have not overcome the lusts of the flesh, and vowed chastity; your own experience will tell you, though I should say nothing at all, to what an inconvenience they have vowed themselves."

No reply being made to this, the accuser proceeded to the next article:

XV.—"Thou, false heretic, sayst, thou wilt not obey our general nor provisional councils."

WISH.—"My lords, what your general councils are I know not; I never studied them, but applied myself to the pure word of God: will you read here the acts of your general councils, or will you give me a book wherein they are contained, that I may read them? If they agree with the word, I shall readily acquiesce."

Here the Court grew angry, some of them saying, Why should we suffer him to proceed any farther? Read the rest of the articles, and let him not dwell upon them. Amongst others, there was one John Graifindscot, standing behind John Lauder the appellant, who hastened him to read the rest of the articles, and not to expect the prisoner's impertinent answers: "For," said he, "we cannot bear them, no more than the devil can the sign of the cross, when it is named."

XVI.—"Thou, false heretic, sayst, that it is in vain to build stately churches to the honour of God; seeing God dwells not in

churches made with hands; neither can God be comprehended within so narrow a compass as the priest's hands."

WISH.—"My lords, Solomon says, 'If the Heaven of Heavens cannot comprehend thee, how much less this house that I have built?' And Job agrees in the same sentence, saying, 'Seeing he is higher than the Heavens, what canst thou build unto him? He is deeper than hell, how shalt thou know him? He is longer than the earth, and broader than the sea.' So that God cannot be comprehended in one place, because he is infinite. Notwithstanding these scriptures, I never said that churches should be destroyed; but, on the contrary, I have ever affirmed, that they should be maintained and upheld, so as that the people might meet in them, and there hear the word of God; and moreover, that wherever the word of God is truly preached, and the sacraments duly administered, there, undoubtedly, God himself is present: so that both the sayings are true and compatible enough, that 'God cannot be comprehended in any place,' and that 'Where two or three are gathered together in his name, there he will be present in the midst of them.' "

Then said he to his accuser, "If you think any otherwise than I say, give your reasons here openly."

But Lauder, without giving any answer, proceeded with his articles.

XVII.—"Thou, false heretic, contemnest fasting, and sayest thou shouldst not fast."

WISH.—"My lords, I find that fasting is recommended in Scripture; and, therefore, I should be a slanderer of the Gospel, if I should despise fasting: and not only so, but I have learned by experience, that fasting is good for bodily health; but God knows who fasts the true fast."

XVIII.—"Thou, false heretic, has preached openly, saying, that the soul of man shall sleep till the day of judgment, and shall not obtain immortal life till then."

WISH.—“God, of his infinite mercy and goodness, forgive them that say such things of me. I know, and am fully assured, from the word of God, that he who has begun to have faith in Jesus Christ, and believes firmly in him, his soul shall never sleep, but ever shall live an immortal life; which life, from day to day, is renewed and improved in grace, nor shall it ever perish and have an end, but live with Christ in immortality; to which life all that believe in him shall come and rest in eternal glory. Amen.”

After some hours spent in this manner, sentence was pronounced against him to be burnt as a heretic. This done, they reconducted him to the castle, and he was lodged in the captain’s apartment that night, the greatest part of which he spent in prayer. Early in the morning the prelates sent two friars to give him notice he must prepare to die that day. Then they asked him, if he would go to confession? and he answered, he had no business with friars, nor would he willingly confer with them; but if they were disposed to gratify him that way, he desired to speak with the learned man that preached the day before.

This request being granted, the sub-prior went and talked with him a good while, and at last asked him if he would receive the sacrament of the Lord’s Supper? “Most willingly,” said he, “so as I may have it administered according to Christ’s institution, under both kinds, of bread and wine.” Hereupon the sub-prior went to the bishops, and told them that he had conferred with the prisoner, who solemnly affirmed, he was free of all the crimes laid to his charge, and that he uttered that not out of a desire he had of life, but to manifest his innocence, which was known to God, before men. The cardinal being offended with this account given by the sub-prior, said, “We have a long while known what a man thou art!” The sub-prior making no answer, asked

if they would permit the sacrament to be given the prisoner. The cardinal conferring with the rest of the bishops for some time about it, answered in all their names, that it was not reasonable to give any spiritual benefit to an obstinate heretic condemned by the church.

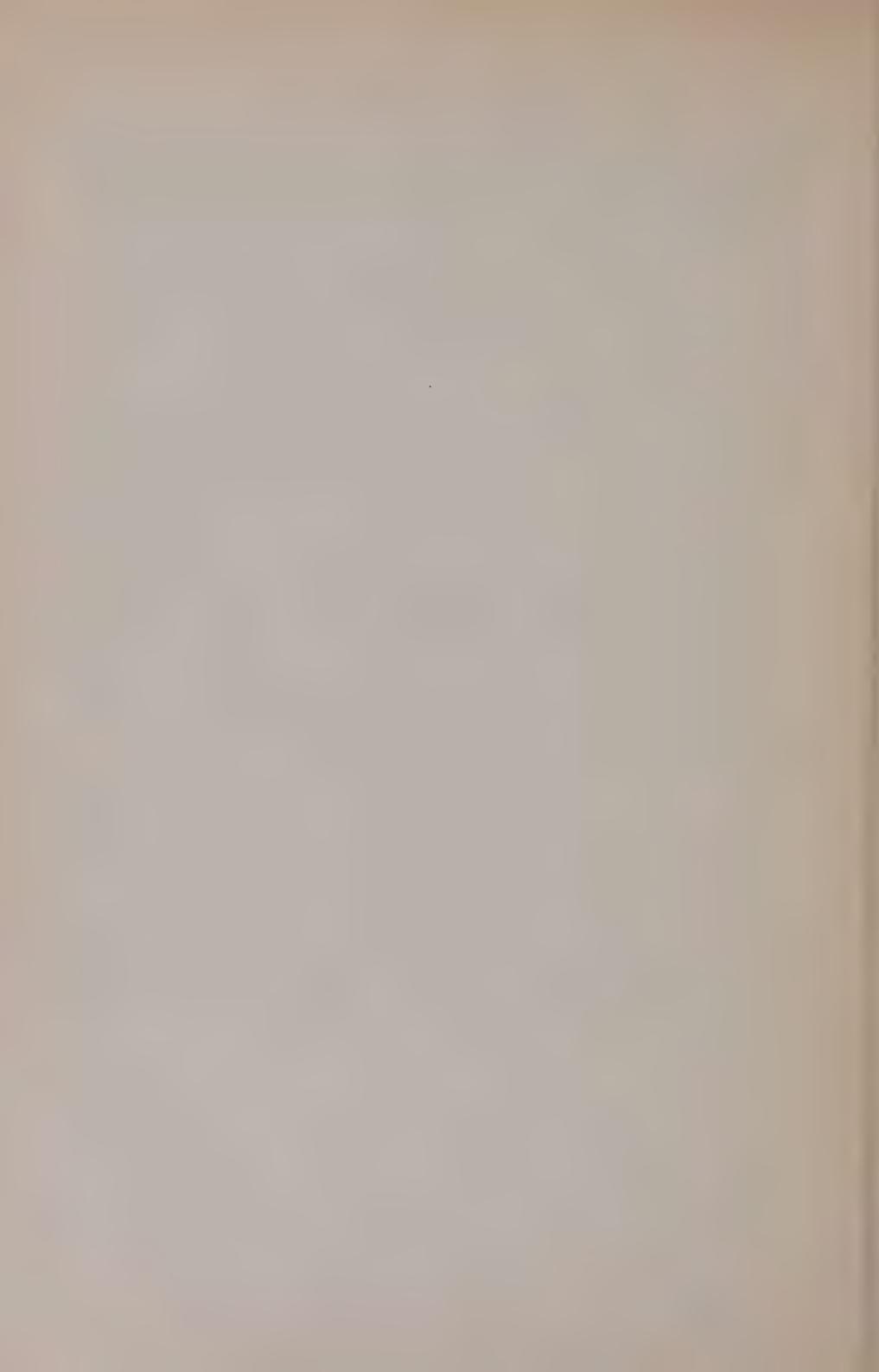
When Wishart heard that the sacrament was denied him, being asked by the captain of the castle, going then to breakfast, if he would partake with him, he answered, very willingly; "and so much the rather, because I perceive you to be a good Christian, and a man fearing God." Then turning himself to the captain, he said, "I beseech you, in the name of God, and for the love you bear to our Saviour Jesus Christ, to be silent a little while, till I have made a short exhortation, and blessed the bread which we are to eat, so that I may bid you farewell." The table being covered, and bread according to custom set upon it, he spoke for about the space of half-an-hour, concerning the institution of the supper, and our Saviour's death and passion, exhorting those that were present to mutual love, and to the leading of a holy life, such as became the members of Christ. Then giving thanks, he brake the bread, distributing to every one that was present a portion; likewise having tasted the wine, he delivered the cup to them, exhorting them to remember with thankfulness the death of our Lord Jesus in this his communion with them. "As for myself," said he, "there is a more bitter potion prepared for me, only because I have preached the true doctrine of our Saviour, which brings to salvation; but pray to the Lord with me, that I may take it patiently, as out of his hand." So concluding with another thanksgiving, he withdrew into his chamber.

Soon after, two executioners came up to him, one of which put a black coat of linen on him, the other fastened

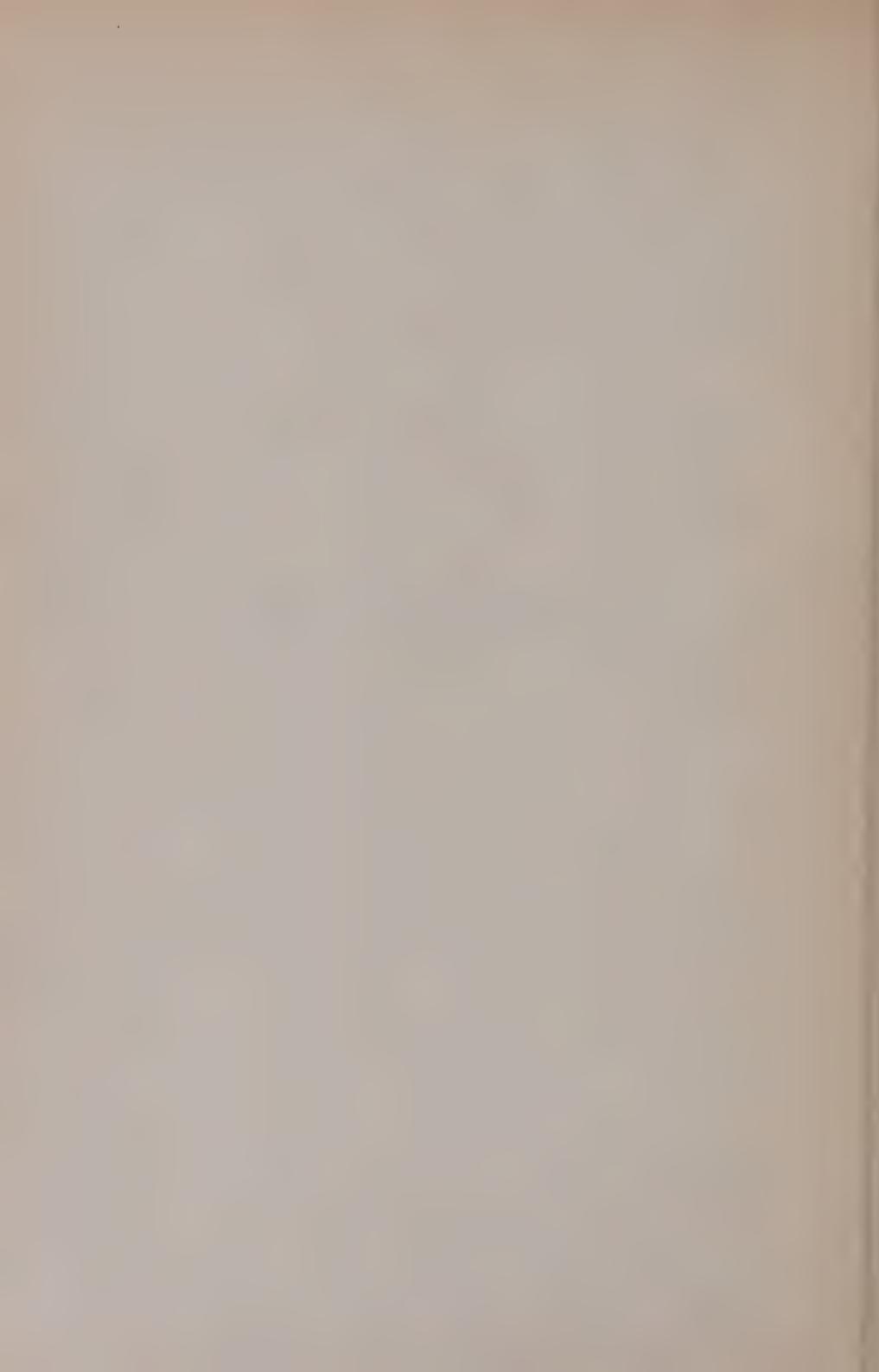
some bags of powder to all the parts of his body; and, thus arrayed, he was brought to an outer room, where he was commanded to stay till all things were ready. In the meantime, there was a scaffold erecting on the east side of the castle, towards the abbey, with a great tree in the middle in the form of a gibbet, to which the prisoner was to be tied; and right against it they planted all the artillery of the castle, lest any commotions should happen, or attempts be made to rescue him. The fore-tower was hung with tapestry, and rich cushions for the conveniency of the cardinal and prelates, who would be spectators of this most doleful tragedy: and, when all things were ready, he was led out with his hands tied behind him, and a guard of soldiers attending him to the place of execution. As he was going out of the castle-gate, some poor creatures, that lay there, asked some alms of him for God's sake; to whom he said, "I have not the use of any hands, wherewith I should give you alms; but our merciful God, who out of his abundance feeds all men, vouchsafe to give you those things that are necessary both for your bodies and your souls." Then two friars met him, crying, "Master George, pray to our lady, that she may be mediator for you to her son."—To whom he said, "Forbear, tempt me not, my brethren."

Being come to the place of execution, and having mounted the scaffold, he turned towards the people, and besought them not to be offended with the good word of God, because of the torments they saw prepared for him; desiring them withal to show his brethren and sisters, who had often heard him, that the doctrine he taught was the true gospel of Christ, given him by the grace of God, which he was sent to preach, and for which he was then, with a most joyful heart and mind, to sacrifice his life. "Some have falsely

reported," said he, "that I should hold the opinion, that departed souls sleep until the last day; but I know and believe the contrary, and am assured that my soul this night shall be with my Saviour in the heavens." This said, he fell upon his knees, and having made a short prayer, he was tied to the stake, and then cried aloud, "O Saviour of the world! have mercy upon me; Father in heaven! I commend my spirit to thy most holy hands." The executioners having kindled the fire, the powder that was fastened to his body blew up: the captain of the castle, who stood near him, perceiving that he was yet alive, bid him be of good courage, and commend his soul to God. "The flame," said he, "has scorched my body, yet has it not daunted my spirit; but he who, from yonder high place (meaning the cardinal), beholds us with such pride, shall within a few days lie in the same as ignor-miniously as now he is seen proudly to rest himself." After which, one of the tormentors drawing the cord that was about his neck, stopped his breath, so that he spoke no more: the fire increasing, his body was quickly consumed to ashes. This execution happened on the 2d of March, 1545. The cardinal, as Wishart had predicted, lived but a little while after; for he was, on the 28th of May next following, surprised and assassinated by Norman Lesley, John Lesley, William Kirkaldy of Grange, and others, in his castle of St. Andrews, and his body exposed to the people in the very same place where he sat to see Wishart's execution.



# THE ETERNAL TRIANGLE



## THE ETERNAL TRIANGLE

*The Trial of Mrs. Arden, and Divers Other Persons, for the Murder of Mr. Arden, in the 5th of Edward VI. Ann. 1551*

THOMAS ARDEN was but a private gentleman, living at Feversham, in the county of Kent; yet the circumstance of his murder, the detection of it, and the punishment of the offenders, were so exceedingly remarkable, that it may very well be inserted in this place. He was a tall and comely person, and married a gentlewoman who was young, well-shaped, and every way handsome; who having unhappily contracted an unlawful familiarity with one Mosbie, a black, swarthy fellow, servant to Lord North, it happened by some means or other that they fell out, and so continued at variance for some time: but she being desirous of a reconciliation, and to use her former familiarity with him, sent him a pair of silver dice by the hands of one Adam Fowle, living at the Flower-de-Luce, in Feversham, for a present.

This brought them together again, so that Mosbie lay often in Arden's house, and in a short time the intercourse between them was so open, that Mr. Arden could not but perceive it; although common report says that he winked at it, for fear of disobligeing her relations, from whom he had some great expectations. Having continued their lewd practices for a considerable time, the woman doated more and more upon Mosbie, and began to loathe her husband extremely; insomuch that she would have been glad to have found out a way to get rid of him. There was a painter at

Feversham, who was reported to be versed in the art of poisoning; to him she applied herself, and asked him, "Whether he had any skill in that or not?" The man seeming to own it; she told him, "She would have such a dose prepared as would make it a quick dispatch." "That I can do," said he; and so he presently went to work, gave it her, with directions to put it into the bottom of a porringer, and so to pour milk upon it: but the woman, forgetting the direction, put in the milk first, and then the poison. Now her husband designing that day to take his horse and ride to Canterbury, his wife brought him his breakfast, which was usually milk and butter. Having taken a spoonful or two of the milk, and liking neither the taste nor color of it, he said, "Mrs. Alice, what sort of milk is it you gave me?" Upon which she threw down the dish, and said, "I find nothing can please you": upon which he went away for Canterbury, and by the way vomited extremely, so that he escaped for that time.

Arden's wife became afterwards acquainted with one Green, of Feversham, a servant of Sir Anthony Agers; from which Green, Arden had wrested a piece of ground, lying on the back side of the abbey of Feversham; about which some blows and many menacing expressions had passed between them; and therefore the woman knowing that Green hated her husband, she began to concert with him how to make away with Arden. The agreement at last was thus: that if they could procure any one to murder her husband, he should have ten pounds for his wicked pains. Now Green having some business to be transacted at London, for his master Sir Anthony, set out for that city, where his master then was, and having a charge of money about him, he desired one Bradshaw, a goldsmith of Feversham, and his

neighbor, to go with him as far as Gravesend, and he would satisfy him for his trouble. When they had got as far as Rainham Down, they saw some gentlemen coming; Bradshaw discerned a man coming up the hill from Rochester, armed with a sword and buckler, and another with a huge staff upon his shoulder, and thereupon said to Green, "It is well that there is some company coming after us, for there is coming up against us as murdering a villain as any in England; and were it not for the other people, we should scarce be able to come off without the loss of our lives and money." Green, as he afterwards confessed, imagining that such an one was fit for his purpose, asked the other, "Which is he?"—"That's he," quoth Bradshaw, "who has the sword and buckler; his name is Black Will."—"How do you know that?" said Green: Bradshaw answered, "I knew him at Boulogne, where he was a soldier, and I was Sir Richard Cavendish's man, and there he committed several robberies and horrid murders, between the passes of that town and France."

By this time the company having overtaken them, they advanced all together, and met Black Will and his companion. Some of the strangers, knowing Black Will, asked him how he did, and whither he was going? He answered by his blood, for he accented almost every word with an oath, "I know not, neither do I care, I'll set up my stick, and go as it falls."—"Then," said they to him, "if you will go back with us to Gravesend, we will give you a supper."—"By my blood," said he, "I care not, I'll go along with you." As they traveled on, Black Will claimed an acquaintance with Bradshaw, saying, "Friend Bradshaw, how dost thou do?" Bradshaw, having no mind to renew his acquaintance, or to have anything to do with such a horrid fellow, replied,

“Why, do you know me?”—“Yes, that I do,” said he, “did we not serve together at Boulogne?”—“I beg your pardon,” said Bradshaw, “I had forgot you.”

Then Green entered into discourse with Black Will, and said, “When you have supped, come to my quarters, at such a sign, and I will give you some sack and sugar.”—“By my blood,” said he, “I thank you.” Thither he went, according to his promise, and was well treated. Then Green and he went and talked together, aside from Bradshaw, and the former proposing to give the other ten pounds to kill Mr. Arden, he answered, with a great oath, “He would if he could but know him.”—“I’ll show him to you to-morrow, in St. Paul’s,” said Green. When they had done talking, Green bid him go home to his quarters; and then, sitting down, he wrote a letter to Mrs. Arden, wherein, among others, he made use of these expressions:—“We have got a man for our purpose; we may thank my brother Bradshaw for it.” Bradshaw, knowing nothing of the matter, took the letter, and went the next morning and delivered it to Mrs. Arden, while Green and Black Will bent their course to London.

Green, at the time appointed, showed Black Will Mr. Arden, walking in St. Paul’s; upon which Black Will asked him, “Who is he that follows him?”—“Marry,” said Green, “one of his men.”—“By my blood,” quoth Will, “I’ll kill them both.”—“Nay,” said Green, “do not do that, for he is in the secret.”—“By my blood, I care not for that, I will kill them both,” replied he. “By no means,” said Green. Then Black Will proposed to murder Mr. Arden in Paul’s Churchyard, but there were so many gentlemen with him, that he could not effect it. Green imparted the whole discourse to Arden’s man, whose name was Michael, and who

ever after was afraid lest Black Will should kill him. The reason why Michael conspired with the rest against his master was because he should marry a kinswoman of Mosbie's.

Mr. Arden taking up his lodgings in a certain parsonage house which he had in London, Michael and Green agreed that Black Will should go thither in the night time, where he should find the doors left open for him to go in and murder Mr. Arden. Michael having put his master to bed, left the doors open according to agreement, though Mr. Arden, after he was in bed, asked him if he had made them all fast, to which he answered, "Yes." But afterwards growing afraid when he had got to bed, lest Black Will should kill him as well as his master, he rose, shut the doors, and bolted them very fast; insomuch, that when Black Will came thither, and could find no entrance, he returned in great fury, that he should be so disappointed, and in that mood he went next day to Green, swearing and staring like a madman, and with many horrible oaths and execrations threatened to kill Arden's man first, wherever he met him. "Nay," said Green, "pray forbear that, let me first know the reason why the doors were shut."

Green having found out Arden's man, and expostulated the matter with him about his not leaving the doors open, according to his promise, Michael, who had framed his answer before, said, "Marry, I will tell you the reason; my master last night did that which I never found him to do before; for, after I was in bed, he got up himself and shut the doors, and chid me severely in the morning for my carelessness in leaving them open." This pacified Green and Black Will. Now Arden having done his business in London, and being ready to return home, his man went to Green and informed him his master would go down that night.

Upon this they agreed that Black Will should kill him on Rainham-down. When Mr. Arden had got to Rochester, his man growing apprehensive that Black Will would murder him as well as his master, he pricked his horse on purpose, and made him go lame, that so he might protract the time and stay behind. His master observing the lameness of his horse, and asking him the reason of it; Michael said, He did not know.—“Well,” quoth his master, “when we come at the smith’s forge, which is between Rochester and the foot of the hill over against Chatham, take off his shoe and search, and then come after me.” So that his master rode on; but, before he came to the place where Black Will lay in wait for him, he was overtaken by several gentlemen of his acquaintance, so that the assassin failed here also to accomplish his bloody design.

After Mr. Arden had got home, he sent his man to the Isle of Sheppey, to Sir Thomas Cheney, then lord-warden of the Cinque-ports, about some business, by whom Sir Thomas sent a letter back to his master; but when he came home, his good mistress took and concealed the letter, and ordered the fellow to tell his master, that he had a letter for him from Sir Thomas Cheney, but that he had unfortunately lost it; and added withal, that he thought it would be his best way to go in the morning himself to Sir Thomas’s, because he knew nothing of the contents of it. Having resolved to do so, he ordered his man to be up betimes in the morning: in the meanwhile Black Will, and one George Shakebag, his companion, were, by Green’s appointment, concealed in a storehouse of Sir Anthony Agers, at Preston, to which place Mrs. Arden went to see him, who brought and sent him victuals and drink several times: he was charged very strictly to be up early in the morning, to waylay Mr.

Arden in a broom-close, between Feversham and the Ferry, and there to murder him. Now Black Will was up in the morning betimes, but missing his way, he tarried in a wrong place.

Arden and his man, early in the morning, riding towards Shornlan, where Sir Thomas Cheney lay, when they were come near the broom-close, Michael, who was ever afraid that Black Will would murder him with his master, pretended he had lost his money-purse: "Why," said his master, "thou foolish fellow, couldst thou take no more care of thy purse? How much was there in it?"—"Three pounds," said he. "Go back, you fool," quoth his master, "and look for it; it is so early that there is nobody yet stirring, thou mayst be sure to find it, and so make haste and overtake me at the Ferry." But Arden nevertheless escaped this time, by reason of the mistake of Black Will, who thought he was sure of him in his return home: but whether some of the lord-warden's servants attended him back to Feversham, or that he considered it was too late for him to go through the broom-close, and so took another way, Black Will once more failed to execute his murdering designs.

St. Valentine's day being near, the villainous crew thought it a proper time to perpetrate their wicked devices. Mosbie intended to pick some quarrel or other with Arden at the fair, and so fight with him, saying, he could not find in his heart to murder a gentleman in such a manner as his wife would have it; though they had made mutual promises to each other, to be altogether as man and wife, and had thereupon received the sacrament at London openly together. But this project of quarreling with Mr. Arden would not do, for though he had been often before and was then also highly provoked by Mosbie, he would not fight. Mosbie

had a sister, who lived in a tenement of Arden's near his house in Feversham, so that Black Will, on the eve of the fair, was sent for to come thither. Green was the man that brought him, and met Mrs. Arden accompanied with Michael, her man and one of her maids; there were also present Mosbie and George Shakebag, and here the plot was laid to murder Arden in the manner they afterwards perpetrated the horrid fact.

Mosbie, indeed, at first, would not consent to so base and cowardly an act, but flung away in a fury, and went up Abbey-street towards the Flower-de-Luce, the house of Adam Fowle, whither he often resorted; but before he got thither, he was overtaken by a messenger sent after him by Mrs. Arden, importuning him, by all means, to return, which he did accordingly: and then she fell down upon her knees before him, and pressed him to go through with the business if he had any manner of love for her, and as she had several times told him, he might be assured there was nobody that would be concerned at his death, or make any search after them that dispatched him.

The importunity of the wicked woman at length prevailing, he was brought to a compliance with the accursed project, and thereupon Black Will was conveyed into Mr. Arden's house, and hid in a closet at the end of the parlor, before which they had sent all the servants out upon some pretense or other, except those who were privy and consenting to the villainous design: Mosbie went and stood at the door in a silk nightgown tied about him, between the hours of six and seven at night; soon after which Arden, who had been at a neighbor's house called Dumpking, and had cleared some accounts that were between them, went home, and finding Mosbie at the door, asked him "If it was not supper-

time?"—"I think not," said he, "I believe it is not yet ready."—"Then," quoth Mr. Arden, "let us in the meantime go and play a game at tables," and so going directly into the parlor through the hall, where his wife was walking, Mr. Arden said to her, "How now, Mrs. Alice?" but she made him little or no answer. In the meantime the wicket-door of the entry was chained by somebody, and when they had got into the parlor, Mosbie sat down on the bench, facing the closet wherein Black Will was hid; Michael, Arden's man, stood behind his master, with a candle in his hand, to shadow Black Will, that his master might by no means perceive him come out of the closet. In their play, Mosbie said, (and that was the signal for Black Will to come out), "Now, sir, I can take you if I please."—"Take me," said Arden, "which way?" With that Black Will rushed out of the closet, and threw a towel about his neck, to stop his breath and strangle him; then Mosbie having a pressing-iron, weighing fourteen pounds, at his girdle, struck him so on the head with it, that he knocked him down, upon which he gave a loud groan, which made them believe he was killed.

From the parlor they carried him into the counting-house, where, as they were about to lay him down, the pangs of death came upon him, and groaning in a most grievous manner, he extended himself, and Black Will giving him a terrible gash in the face, slew him outright. Then he laid him along, took his money out of his pocket, and the rings off his fingers, and coming out of the counting-house, said, "The business is over, give me my money"; upon which Mrs. Arden gave him ten pounds, and then he went to Green's, borrowed a horse of him, and rode away.

After Black Will was gone, Mrs. Arden went into the

counting-house, and with a knife stuck the corpse seven or eight times in the breast; then they cleaned the parlor, wiped away the blood with a cloth, and strewed the rushes which had been disordered during the struggle. The cloth and the bloody knife wherewith she had wounded her husband they threw into a tub by the well's side, where they were afterwards both found. This done, she sent for two Londoners then at Feversham to come to supper, to which they had been invited before the horrid murder was committed. They were grocers by trade, and their names were Prune and Cole; when they came she said, "I wonder where Mr. Arden is? He will not stay long; come, let us sit down, he will be quickly with us." Then Mosbie's sister was sent for, and sat down with them, and they were all very merry.

When supper was over, Mrs. Arden made her daughter play on the virginals, and they danced, and she amongst them, frequently saying, "I wonder Mr. Arden stays so long; come, let us sit down, he will surely soon be with us; let us play a game at tables." But the Londoners said, They must go to their lodgings, or else they should be locked out, and so took their leave of the company and departed. As soon as they were gone, the servants, who were not privy to the murder, were sent into the town, some to look for their master, and others upon other errands. Then Michael, a maid, Mosbie's sister, and one of Mrs. Arden's own daughters, took the dead body, and carried it out into a field adjoining the church yard, and to his own garden wall, through which he went to church. In the meantime it began to snow, and when they came to the garden door, they had forgot the key, so that one of them was sent to fetch it; it was brought at last, and the door being unlocked, they conveyed the corpse into the field, about ten paces from

the door of that garden, and laid it down on its back, in its nightgown and slippers, between one of which and the foot stuck a long rush or two.

Having, by this management, effectually secured themselves, as they imagined, from all manner of discovery, they returned the same way into the house; the doors were opened, and the servants, which had been sent into the town, being come back, it was, by this time, grown very late. However, the wicked woman sent her people out again in search for their master, directing them to go to such places where he mostly frequented, but they could hear no manner of tidings of him; then she began to exclaim, and wept like a crocodile. This brought some of her neighbors in, who found her very sorrowful, and lamenting her case, that she could not find out what was become of her husband. At last, the mayor of the town and others went upon the search for him. Here we are to observe, that the fair was wont to be kept partly in the town, and partly in the abbey, but Arden procured it to be wholly kept in the abbey-ground, of which he had made a purchase; and, by this means, being like to have all the benefit of it, to the prejudice of the town and inhabitants, he was bitterly cursed for it. After they had searched other places up and down, they came, at length, to the ground where the dead body was laid; where Prune, the London grocer, above mentioned, happening to spy it first, called to the rest of the company, who, narrowly viewing the same, found it to be the corpse of Arden, and how it was wounded: they found the rushes sticking in his slippers, and found some footsteps of people in the snow, between the place where he lay and the garden door.

This causing suspicion, the mayor ordered everybody to stand still, and then appointed some of the company to go

about to the other side of the house and to get in that way, and so through into the garden, towards the place; where, finding the prints of people's feet all along before them in the snow, it appeared very plain that he was conveyed that way, through the garden into the place where they had laid him.

The mayor and the company hereupon went into the house, and being no strangers to the ill-conduct of Mrs. Arden, they very strictly examined her about her husband's murder. She defied them, and said, "I would have you to know I am no such woman:" but they having found some of his hair and blood near the house, in the way he was carried out, as also the bloody knife she had thrust into his body, and the cloth wherewith the murderers had wiped off the blood spilt in the parlor; these things were urged so home, that she confessed the murder, and upon beholding her husband's blood, cried out, "Oh! the blood of God help me, for this blood have I shed." She then discovered her guilty associates.

Mrs. Arden, her daughter, Michael, and the maid, were seized and sent to prison; then the mayor and the rest that attended him, went to the Flower-de Luce, where they found Mosbie in bed. They soon discovered some of the murdered person's blood upon his stockings and purse, and when he asked them what they meant by coming in that manner, they said, "You may easily see the reason"; and, showing him the blood on his purse and hose, "these are our evidences." He thereupon confessed the horrid fact, and was committed to prison, as well as all the rest of the bloody crew, except Green, Black Will, and the painter, which last was never heard of after.

Some time after, the assizes were held at Feversham,

where all the prisoners were arraigned and condemned. There are no parts extant, that we can possibly meet with, of the formality of their trials; the confession they had made of the cruel fact, could not admit much of it; only there was one unhappy circumstance which attended it, that an innocent man should suffer with the guilty; for Mrs. Arden accused Bradshaw, upon the account of the letter sent by Green from Gravesend about Black Will, as before related. All the business was, that by the description Bradshaw gave of Black Will's qualities, he judged him to be a proper instrument for the perpetration of the intended murder; to which, as Green some years after at his death declared, he was no way privy. Nevertheless, the man, upon Mrs. Arden's accusation, was presently taken up and indicted as a procurer of Black Will to murder Mr. Arden. The man made all the defense he could for his life, and desiring to see the condemned persons, he asked if they knew him, or ever had any conversation with him, and they all said no. Then the letter was produced and read. Here the prisoner told the court the very truth of the matter, and upon what occasion he had told Green what he said of Black Will, but it availed him nothing; condemned he was, and suffered death for a murder he had no manner of knowledge of, and which he denied to the last.

As for the real bloody criminals, they were executed in several places; for Michael, Mr. Arden's man, was hanged in chains, at Feversham, and one of the maid-servants was burned there, most bitterly lamenting her condition, and loudly claiming against her mistress, who had brought her to that deplorable end, for which she would never forgive her. Mosbie, and his siste., were hanged in Smith-field, at London. As for Mrs. Arden, the founder of all

the mischief, she was burnt at Canterbury. Green returned some years after, was apprehended, tried, condemned, and hanged in chains, in the highway between Ospringe and Boughton, over against Feversham: but, before his death, he proclaimed the innocence of Bradshaw, though it was then too late. Black Will was burnt on a scaffold, at Flushing, in Zeeland. Adam Foule, who lived at the Flower-de-Luce, in Feversham, was brought into trouble about this unhappy affair; he was carried up to London with his legs tied under the horse's belly, and committed to the Marshalsea. The chief ground for this was Mosbie's saying, that had it not been for Adam Foule, he had not been brought into that trouble, meaning the silver dice he had brought for a token from Mrs. Arden to him; but when the matter was thoroughly searched into, and Mosbie clearing him of any manner of privity to the murder, he was, at length, discharged.

## THE COUNT AND THE BLUNDERBUSS



## THE COUNT AND THE BLUNDERBUSS

*The Trial of Count Königsmark and Others, for the Murder of Thomas Thynn, Esq.*

*Before Sir Francis Pemberton, Chief Justice of the King's Bench, Sir Francis North, Chief Justice of the Common Pleas, and Sir William Montagu, Chief Baron of the Exchequer, at London, on February 28th, 1682.*

A COSTUME piece. An absentee heroine. A hero who was villain. The London of Charles II, Pepys and Evelyn. A coach and four and a blunderbuss. Rapiers and rakes. They are all parts of the play. First, to introduce the characters.

The lady, who seems to have been the quite unconscious cause of the affair, was Mrs. Thynn. She had, especially considering her years, a curious history. Her father was Josceline, eleventh Earl of Northumberland, who died in Italy in his twenty-sixth year, the last of the male line of the house of Percy. Her mother was Lady Elizabeth Wrottesley, daughter of the Earl of Southampton. The daughter of this very noble pair was only three when her father died, leaving her the richest heiress in all England. After the death of the earl, the countess took up residence with her small daughter in Paris and there, after about three years more, she married Mr. Ralph Montagu, ambassador from England to the court of Louis XIV. The most important result of this marriage, so far as this story is concerned, lay in the fact that it inspired the old dowager

Countess of Northumberland to insist that little Elizabeth, now aged about six, should be turned over to her to be brought up in her father's house.

Forthwith, the young Lady Elizabeth Percy went to live at the ancient family seat, Petworth in Sussex and, from then on, probably had no easy time of it. The old countess had a gift for meddling, for jealousy and for intrigue. It was an unfortunate combination. What passed during the next seven years at Petworth we do not know but, at the tender age of thirteen, Elizabeth found herself, the phrase is surely justified, married to Henry Cavendish, Earl of Ogle. His term was short. There is no record that the couple ever lived together, and Cavendish died within the year. An interval of a few months only, and Elizabeth was again marketed successfully by her grandmother, this time to Thomas Thynn, Esquire, of Longleat, in Wiltshire. It was not a step down, in reality, for the Thynns had one of the oldest names and one of the longest purses in England. This second marriage was in the summer or autumn of 1681 and, immediately after the ceremony, the couple separated, Thynn consenting, on the request of the bride's mother, that Elizabeth spend a year on the continent. She was not quite fifteen.

Thomas Thynn was of his period. Young, rich, good looking, he was in excellent favor at court, although, at this particular time, he was hand in glove with the Monmouth faction which was presently to split the kingdom with civil war. Thynn was popularly known as Tom of Ten Thousand, because of his income which was enormous for that time. There was no pretense that his marriage was more than a matter of convenience, but he was to pay dearly for it nevertheless.

Enter the villain. Charles John Von Königsmark was a Swede by birth, his branch of the family having settled in Sweden some fifty years before. The Königsmarks came originally from the Mark of Brandenburg and, after their emigration, the name became one of the most distinguished in the military history of Sweden. Charles John was born in 1659, so that he was twenty-three when he went on trial for his life in England. Considering his age, Königsmark had had an unusual amount of experience. He had traveled extensively through Europe, and had cut a figure at more than one court. He had sailed with the Knights of Malta, and did well in fighting against the Turks. In 1681 he had come to England with a letter of recommendation from the King of Sweden to Charles II but, after ingratiating himself with that merry monarch, Charles John had sallied out again, a born wanderer and a born adventurer. It was probably during this visit that Königsmark had cast amorous eyes on the young Mrs. Thynn and, possibly, had even paid his addresses to her. Just when and where they met is not known. At any rate, the Count was to be seen in London again early in the year 1682, and it was then that he determined that Mrs. Thynn would be even more attractive as a widow than as a wife—of some one else. There is no indication that he had actually sounded the lady as to her sentiments. He seems to have been willing to chance the success of his suit, once Thynn was removed from the scene.

On the night of Sunday, the 12th of February, 1682, all the court end of London was startled by the news that Thynn had been shot, as he was passing along the public streets in his coach. The spot was towards the eastern extremity of Pall Mall, directly opposite to St. Alban's Street,

later occupied by the covered passage known as the Opera Arcade. King Charles at Whitehall might almost have heard the report of the assassin's blunderbuss, and so might Dryden, sitting in his favorite front room on the ground floor of his house on the south side of Gerrard Street. The agitation of the court was not simply on Mr. Thynn's account, but because it was at first feared that the murder was political, Thynn being a partisan of the Duke of Monmouth. In a few hours, however, any idea of this kind was dispelled. A chairman "who had carried one of the ruffians from his lodging at Westminster to the Black Bull, there to take horse, and a loose woman who had used to visit the same person" gave evidence in consequence of which a man was at once arrested. This man proved to be a Swede, who confessed that he was the servant of a German Captain who, with two others, a Swedish Lieutenant and a Pole, had lain in wait for Thynn. By six in the morning, all three had been taken and lodged in prison. Meanwhile, for some reason that is not entirely clear, suspicion had fallen on the Königsmarks. The younger brother of Charles John was at school in London, and his tutor was examined closely. This examination was fruitful, for the tutor at once admitted that "the eldest Count Königsmark (who had been in England some months before, and made his addresses to the lady who so unfortunately married Mr. Thynn) arrived incognito ten days before the said murder, and lay disguised till it was committed, giving great cause to suspect that the Count was at the bottom of this bloody affair."

Sir John Reresby, who conducted the preliminary examinations of the prisoners, says of the affair in his memoirs:

I several times attended the King, both in private and in council, from time to time, to give him information as fresh matter occurred or appeared; and upon the whole it was discovered, partly by the confession of the parties concerned, and partly by the information of others, that the German Captain had been for eight years an intimate of Count Königsmark . . . and that during the time that he was in England, before, he had made his addresses to Lady Ogle, the only daughter and heiress of the Earl of Northumberland, who had been married to the deceased Mr. Thynn, and that the said Count had resented something as an affront from Mr. Thynn: that the Captain, moved thereto out of pure friendship to the Count (though not at all with his privity, as pretended), had determined within himself to avenge his cause, and that, in consequence of such his resolution, the murder happened. It appeared also that such his cruel design was furthered by the assistance of the Swedish Lieutenant and the Pole, who had been by him obliged to discharge the blunderbuss into the coach.

As a matter of fact, Borosky, the Pole, deeply implicated Königsmark in his examination, while Stern, the Swede, insisted that all his dealings had been with the German Captain.

Meanwhile, there was an active search for Königsmark, and in the London *Gazette* for Thursday, the 16th of February, we find the runaway advertised in these terms:

The same Count Königsmark is aged about 25 or 26 years, of a low stature, pretty full set, fair long hair, but sometimes wears a periwig, a round face with a few pock holes in it: whoever does discover him, so he may be put into the hands of justice, shall have £200 reward.

It was a large offer, for those days, and shows how badly the Count was wanted. On the night of February 19th,

just one week after the murder, Königsmark was taken at Gravesend, and was brought back to London to be examined by an extraordinary council, called by the King. The examination was superficial, and Königsmark denied all knowledge of the matter. His version was that "he had lain concealed because he was under cure for a disorder which he did not wish to be known; and that he had gone away in disguise, on hearing of the murder, by the advice of friends, who told him it would reflect on him, should it be known he was in England, when an intimate of his labored under so violent a suspicion of having committed so black a deed." Sir John Reresby makes it entirely clear that, notwithstanding this, he was perfectly convinced that Königsmark was privy to the murder. King Charles let it be understood, however, "that he was willing the Count should get off," and there the matter rested until the trial. In the interval, Königsmark's friends tried bribery, without success, so that it seems fairly clear that his guilt was believed in by those who best knew him.

Thynn had survived his wounds only a few hours, during which time the Duke of Monmouth sat by the bedside of his dying friend. Thynn died at about six in the morning, just about the hour his murderers were being taken.

After being examined, Königsmark and the other three prisoners were lodged in Newgate, and an indictment having been found against them by the Grand Jury at Hick's Hall, on Monday the 27th, they were brought up the next day to the bar at the Old Bailey to be arraigned and tried, Charles George Borosky, alias Boratzi, Christopher Vratz and John Stern, as principals in the murder, and Charles John, Count Königsmark, as accessory before the fact. The trial began at nine o'clock in the morning.

The prisoners being foreigners, an interpreter was sworn so that they might know the proceedings. The indictment was then read with all its particularization, charging, among other counts, that "Thou, the said Borosky, alias Boratzi, a certain blunderbuss of the value of five shillings, the said blunderbuss being then charged with gunpowder and four leaden bullets; which said blunderbuss thou, the said George Borosky, alias Boratzi, in both thy hands, so as aforesaid loaden, to and against the said Thomas Thynn, then and there, with force of arms, feloniously, wilfully, and of thy malice aforethought, didst discharge and shoot off." The indictment having been read, an interpreter named Vandore was called:

**LORD CHIEF JUSTICE.**—Why, you must read this to them now in their own language, or else they cannot understand it.

**L. C. J. NORTH.**—You, that are the interpreter, tell them that you are going to interpret the indictment to them by degrees.

**MR. VANDORE.**—Yes, my Lord, I will.

**L. C. J.**—Do not read them all the circumstantial, but only the substance of the indictment.

Then the Clerk of the Court went to the bar and dictated to the interpreter who, in turn, gave the gist of the indictment to the accused:

**L. C. J.**—Well, you have told them the substance of it, that they are indicted for killing Mr. Thynn?

**INT.**—Yes.

**L. C. J.**—Well, what says the first man (Borosky)?

**C. OF C.**—I asked him if he be guilty of the murder whereof he stands indicted, and he says he is Not Guilty.

**L. C. J.**—Does he say so?

INT.—Yes, he says he is Not Guilty.

L. C. J.—Why, now tell him the formality, that he must put himself upon the jury here.

At this point, Sir Nathaniel Johnson was also sworn as Interpreter:

L. C. J.—Ask him this question. Tell him he is accused of the murder of Mr. Thomas Thynn, and ask him if he be Guilty or Not Guilty?

VANDORE.—He says he is Not Guilty, my Lord. I asked him just now.

L. C. J.—Then, Sir Nathaniel Johnson, if you can make him to understand it, tell him that our manner of trial here is by twelve men, and that is by putting himself upon the country; and therefore ask him how he will be tried? Tell him that the method is by saying, “By God and the Country.”

SIR N. J.—My Lord, he is a very dull kind of man; he knows not how to answer, nor what to say, nor won’t say anything; that is the truth of it.

L. C. J.—Ask him if he be willing to be tried after the manner of the English.

SIR N. J.—Yes, he says he is willing to be tried after the fashion of the English.

L. C. J. NORTH.—He hath pleaded Not Guilty, and the other follows of course.

L. C. J.—Ask the other, the Captain (Vratz) the same thing.

SIR N. J.—He desires a French interpreter, for he speaks French.

L. C. J.—Surely, here are enough people that understand French; but ask him if he does not understand English?

SIR N. J.—He can understand some, he says.

L. C. J.—Then ask him whether he be Guilty or Not?

SIR N. J.—He says he is Not Guilty, my Lord.

L. C. J.—Now ask Mr. Stern, but first ask the Captain how he will be tried?

SIR N. J.—He says he will be tried by God, and half his own country and half English.

L. C. J.—He shall have his request.

SIR N. J.—He desires one thing further.

L. C. J.—Look you, Sir Nathaniel Johnson, you must tell him this: he shall be tried by half foreigners and half English: that is it, I suppose, he desires.

SIR N. J.—My Lord, he desires that there may be none of the jury that are anything a kindred or relation to Mr. Thomas Thynn, nor any particular friend of his, and he is satisfied.

L. C. J.—No, there shall not; we will take care of that. Now ask Mr. Stern the like question.

SIR N. J.—My Lord, he says he is Not Guilty.

L. C. J.—Ask him, too, how he will be tried; whether by a jury?

SIR N. J.—He says, he is content to be tried as the others are, by half strangers and half English.

L. C. J.—Now then, ask my Lord Königsmark what he says?

MR. THYNN (probably the younger brother of Thomas):—He speaks English, my Lord.

L. C. J.—But not well enough, may be, to understand the whole.

L. C. J. NORTH.—Sir Nathaniel, what does he say?

SIR N. J.—My Lord, he says it is a concern of his life, and therefore he desires he may have not only one interpreter but others: he desires he may have two or three, that there may be no mistake.

L. C. J.—Very well.

SIR N. J.—He says, that I understand the Dutch (German) language, but his life and honor are concerned, and therefore he would have three or four.

L. C. J.—Who would he have?

SIR N. J.—Sir Thomas Thynn (probably Thynn's cousin and

heir, who was afterwards created Viscount Weymouth) said they had one that was brought by them.

MR. THYNN.—That is Vandore, who is sworn already.

L. C. J.—Look you, Sir Nathaniel, tell my Lord, if he pleases, he shall have a French interpreter, for I know he speaks that language very well.

SIR N. J.—My Lord, he says that High-Dutch (German) is his natural language, and that he can express himself best in that.

LORD CHIEF BARON.—Sir Nathaniel Johnson, you must ask the Count whether he be guilty of the indictment as accessory before the fact.

SIR N. J.—I have asked, my Lord, and Not Guilty, he answers.

C. OF C.—How will he be tried?

SIR N. J.—He says that he will be tried by God and half his own country, or half foreigners and half English; and he desires they may be persons of some quality, as they use to treat persons of his quality, and strangers.

L. C. J.—There shall be such strangers, tell him. You have merchants of good account, I suppose, upon this panel?

UNDER SHERIFF.—Yes, my Lord, they are all such.

SIR N. J.—He desires he may be tried distinctly from the others.

L. C. J.—That cannot be but, look you, sir, pray tell my Lord this, that though the evidence must be given, and the jury must be charged altogether, yet in this case we will distinguish his case to the jury, if there be occasion.

L. C. B.—And his evidence will come distinct.

VANDORE.—My Lord, he asks this question of your Lordship, and this honorable Court, if it be agreeable and according to the justice of this nation, that my Lord may be allowed two or three days' delay, because he is to prepare himself and his witnesses for his trial.

SIR N. J.—My Lord, he says this: his witnesses are not prepared, and he not having had time to recollect himself, so as to fit himself for his defense, therefore he begs the favor of the Court that he

may have a day or two's time to recollect himself. He says he is to answer circumstances with circumstances, my Lord; he says he has some witnesses as to circumstances that are very material to answer such circumstances as are brought against him. He does not understand the law, my Lord, nor has had time to have any counsel to inform himself.

L. C. J.—You must tell him this: that which he is charged with is matter of fact, that none can instruct him in but himself; counsel can do him no good in such a case as this.

SIR N. J.—My Lord, he says the matters that are objected against him are only circumstances, my Lord, and they require an answer, which he can do by other circumstances, and he desires time to recollect himself, two or three days' respite; he desires if it were but a little time, a day or two.

MR. THYNN.—My Lord, our witnesses are all ready, and the counsel instructed, and wait here to go on.

L. C. J. NORTH.—Look you; pray will you tell him, when the trial is once begun the jury can neither eat nor drink till they have given their verdict; that is the law, and we cannot change the law; therefore we cannot allow him the time he desires. He knows what he is accused of, and has known it a good while, and has had time to recollect himself, and prepare himself.

SIR N. J.—My Lord, he says the jury are not yet together nor charged with him, and therefore, till the jury are charged, he thinks he may have time, if your Lordship please to allow it.

L. C. J.—Look you; you must tell him that he is to understand that there is but one indictment against the principals and himself, and we cannot try this by piecemeal; we cannot try the principals now, and my Lord Königsmark another time.

SIR N. J.—If it must be so, he says, he must throw himself upon your Lordship; he hopes he shall have nothing but what is just and fair, and he hopes your Lordship will be of counsel to him, as the fashion of this country is: if anything arises of matter of law, he desires he may have the advantage of it: and if he cannot

have a day or two, he says, the innocence of his case will protect him. Count Königsmark, knowing how innocent he is, won't stick for a day or two, but he will be ready to be tried as your Lordship will think fit; he has innocence on his side, and that will protect him.

L. C. J.—Let my Lord know that we will be careful in examining all things that concern him.

SIR N. J.—He says, he does not fear it, my Lord, having to do with such honorable persons, nor doubt it at all.

L. C. J.—Then swear a jury. But, look you, my Lord Königsmark, consider this; as the gentlemen of the jury come to be sworn, if you dislike any of them, you may except against them.

SIR N. J.—My Lord, he says, being altogether a stranger here in England, and not knowing any of the persons, he begs the favor of the bench that he may have the names of those that are returned of the jury, and a little time to consider of it.

L. C. J.—That we cannot do: all we can do for you is, we will take as much care as we can that you may have indifferent persons and persons of quality.

L. C. J. NORTH.—Pray tell him, the law gives him the privilege of peremptory challenge.

SIR N. J.—He says, my Lord, he does not know who they are, but they may be persons who are touched, and may have something of evil will or spleen against him. His father served against the King of Denmark, and against the Poles, and the Papists; and his father was a Protestant, and served the Protestant cause.

L. C. J.—What countrymen are they, Mr. Sheriff? (Of what nationality are those called for jury duty.)

U. S.—They are French and Dutch, most of them. I do not believe there is ever a Dane amongst them.

L. C. J.—We will call all Frenchmen, if he would rather have them than Dutch.

SIR N. J.—He would very gladly have them all High Dutch, if not, that he may have some.

L. C. J.—I thought he had excepted against the Dutch.

SIR N. J.—No, against the Danes; for his father, in the wars, burnt their towns.

L. C. J.—Examine them, as they come to the book, if there be any of the Roman Catholic religion, and do not let any such be sworn.

MR. SHERIFF PILKINGTON.—There is none such among them, I dare say.

L. C. J.—Sir Nathaniel Johnson, tell my Lord he shall have no Roman Catholics at all.

SIR N. J.—He thanks your Lordship. He desires he may have the panel to look upon, and he hopes this is an easy favor.

L. C. J.—Let him have the panel, if it will do him any good. He is a stranger; satisfy him in what we can.

The list of prospective jurors was then handed to the Count, who looked it over with care. He was certainly being treated with immense and unusual consideration.

L. C. J.—Tell him, as the jury is called, he shall have every one of the Outlandishmen and Englishmen brought before him.

SIR N. J.—My Lord, he thanks you for this favor.

L. C. B.—Sir Nathaniel Johnson, tell the Count that they first call an Englishman, then a foreigner, and they shall be brought to view.

L. C. J.—Pray, have you told the other persons that their time to challenge is before the jury is sworn?

SIR N. J.—The Polander (Borosky) says he can challenge none, because he knows none.

L. C. J.—What say the rest?

VANDORE.—They say they know nobody, and can except against nobody.

C. OF C.—Call Sir William Roberts. (Who, appearing, stood up.)

L. C. J.—My Lord Königsmark, there is the foreman.

SIR N. J.—He has nothing to say against him.

L. C. J.—Then hold him a book, and swear him. (This was done.)

C. OF C.—Call Mr. Downing.

INT.—He says he is no foreigner.

L. C. J.—Then he must not be sworn.

C. OF C.—Moses Charas. (Who then appeared.)

INT.—He says he has nothing to say against him. But he himself says he does not speak English, but he desires to speak French.

C. OF C.—Then tell him, in French, he must lay his hand on the book and be sworn, and hearken to his oath.

SIR FREDERICK WINNINGTON (one of the counsel for the prosecution).—We challenge him for the King.

L. C. J.—For what cause?

SIR F. W.—My Lord, we take it that we need not show any cause, unless there be any want of the number in the panel.

L. C. J.—Then we must do him right, and tell him what advantage the law gives him. Tell my Lord, you that understand English, that this gentleman is challenged for the King; and if the King show any good cause for it, he must not be sworn, else he must. And the way for him to cause the King's counsel to show their cause—if he desire it—is to challenge all the rest.

MR. WILLIAMS (another of the counsel for the prosecution).—We waive our challenge: for the reason why we challenged him was, because he did not understand English, which will be no reason at all. (Charas was then sworn.)

C. OF C.—Sir Henry Ingoldsby.

SIR N. J.—He challenges him, my Lord.

C. OF C.—Sir William Gulston.

SIR N. J.—He excepts against him, my Lord.

L. C. J.—Does he challenge him in respect of what I said to him about the Outlandish gentlemen, that the King is to show cause? Or how does he challenge him?

INT.—My Lord, he says he hears he is a friend to Mr. Thynn.  
L. C. J.—Well, let him be passed by then.

The Count challenged very freely, but a jury was finally got and the case opened. These preliminary proceedings I have given in full, because of their picturesqueness and because of the sketch they give of the administration of justice in England in the seventeenth century. The case was unusual, of course, and Königsmark was given far more consideration than the ordinary offender. It is all very colorful, with its references to Outlandish gentlemen, the absence of counsel for the defense and the insistence of the court that the case be disposed of at one sitting, in accordance with the procedure of the period.

Once the jury was seated, proclamation for information and prosecution was made, and a chair was set for the Count at his request. Then the Clerk of the Court addressed the jury:

Gentlemen, look upon the prisoners, you that are sworn, and hearken to their cause; they stand indicted *prout* in the indictment, *mutatis mutandis*—against the peace of our Sovereign Lord the King, his crown and dignity. Upon this indictment they have been arraigned, and thereunto have severally pleaded Not Guilty: and, for the trial, have put themselves on God and their country; which country you are. Your charge is to inquire whether they, or any of them, are Guilty of the offenses whereof they stand indicted, or Not Guilty. And if you find them, or any of them, Guilty, you are to find what goods or chattels, lands or tenements they had at the time of the felony and murder committed, or at any time since. If you find them, or any of them, Guilty, you are to inquire whether they, or any of them, fled for it: if you find that they, or any of them, fled for it, you are to inquire of their goods and

chattels, as if you had found them Guilty. If you find them, or any of them, Not Guilty, nor that they did fly for it, you are to say so, and no more, and hear your evidence. But if you acquit any one of the principals . . .

L. C. J.—That is a mistake. It must be all the principals.

C. of C.—If you acquit the principals, you are not to inquire of Charles John Königsmark as accessory.

After this quaint charge the case was opened promptly by the prosecution. We may omit the opening speeches for the Crown, though they were astonishingly brief for the time, and follow the story through the testimony of the witnesses. The first witness called was William Cole, a servant of Mr. Thynn's:

COLE.—My Lord, my master was coming up St. James's Street from the Countess of Northumberland's.

SIR F. W.—Name your master.

COLE.—Mr. Thynn. And I had a flambeau in my hand, and was going before the coach and, coming along at the lower end of St. Alban's Street, I heard the blunderbuss go off; so upon that I turned my face back, and saw a great smoke and heard my master cry out that he was murdered; and I saw three horsemen riding away on the right side of the coach, and I pursued after them, and cried out murder. I ran to the upper end of the Haymarket, till I was quite spent and was able to go no further; and turning back again, my master was got into the house and I understood he was wounded. That is all I know.

MR. WILLIAMS.—You say you heard a blunderbuss go off and, turning back, you saw three men riding away from the coach?—Yes.

MR. W.—Look upon the prisoners at the bar. Can you say all of them, or any of them, were the men?—No, I cannot. I did not see their faces, but I saw the horse of one of them was a little bay horse.

MR. W.—But do you take any of these men to be one of the three?—I did not see any of their faces.

SIR F. W.—What time of night was it?—A quarter after eight.

SIR F. W.—Pray, what day of the week?—Sunday.

SIR F. W.—What day of the month?—The 11th or 12th of February.

SIR F. W.—Then where is William Ellers? (Ellers, who seems to have been the coachman or postilion, took the stand.) Pray, do you tell the court and jury how Mr. Thynn was wounded, and by whom, and what you know of it.

ELLERS.—My Lord, I came with my master from St. James's Street, from my Lady Northumberland's, and as I came at St. Alban's Street there came three men riding by the right side of the coach and, as they rid, one of them turned about and bid me, "Stop, you dog!", and just as I looked about the fire was let into the coach upon my master, and the men ran away as fast as they could.

SIR F. W.—How many were there of them?—There were three.

SIR F. W.—Were these men at the bar, or any of them, the persons?—I cannot tell.

SIR F. W.—What were the words they said when the coach was stopped?—"Hold, hold!" or "Stop, you dog!"

MR. W.—What condition was your master in then? Was he shot then?—Yes.

L. C. J.—Look you, Mr. Craven, you hear what these witnesses say. Tell it to the gentlemen of the jury that are Outlandish men that these witnesses swear that there were three men did do this thing; the one of them stopped the coach, and the other shot into it; but it was at that time of night they could not know their faces, and they all rid away.

At the suggestion of the court the medical testimony was now heard and, while it was of no very great importance, it

is sufficiently entertaining to give almost in full. First, a Mr. Hobbs, evidently a physician, was called:

MR. WILLIAMS.—Had you the searching of Mr. Thynn's body after it was hurt?—Yes.

MR. W.—How did you find him?—I was with him, Sir, that night he was wounded, and I found him shot with four bullets, which entered into his body, and tore his guts, and wounded his liver and stomach, and his gall, and wounded his great guts and his small guts, and broke one of his ribs, and wounded the great bone below.

SIR F. W.—What time came you to see him?—About nine or ten of the clock.

SIR F. W.—Did he die of those wounds?—Yes, he did die of those wounds.

MR. W.—Did you apprehend them all mortal, or any, or which of them?—I believe there was never a wound but it might prove mortal.

L. C. J.—What did you observe of the bullets; was there anything done to them more than ordinary?—I could not see anything. I have them here, my Lord.

L. C. B.—Were they iron or lead? (Hobbs here handed the bullets to the bench.)—Two of them, the little ones, may be iron, for one of them went through a thick bone, and yet there was no impression on it.

L. C. J.—And this that has the impression you think might be done against the bones?—Yes.

L. C. J.—Was this left ragged on purpose to do the more mischief?—Which, my Lord?

L. C. J.—This that is left at the end here. Would this be more mortal than another bullet, or harder to heal?—No, but they take up a greater space in flying.

L. C. J.—Would not the raggedness hinder the healing?—No,

only bruise the flesh, which bruised flesh must come away before it is healed. All bullets wound by bruising of the flesh.

L. C. J.—Well, these were the four bullets that were found in Mr. Thynn's body?—I verily believe they are. Dr. Lower had them out of my hands for a day or two, but I believe them to be the same.

L. C. J.—Was there any lodged in the stomach?—Yes, one of the little ones.

L. C. J.—Had they broke the great bone?—Yes, the great bone at the bottom of the belly.

L. C. J.—Two of them?—A great one and a little one. Two of them passed through that bone and lodged in the backbone.

L. C. J.—Was there any of them gone through the body?—One of them lay between the ribs and the skin.

L. C. J.—None were got quite through, then?—None.

SIR F. W.—Call the coroner, Mr. White.

The coroner was called and merely substantiated the evidence already given by Hobbs. In the course of his examination, however, an interesting fact was brought out in what seems to be a highly irregular way:

MR. WILLIAMS.—Pray tell the Polander what is said. That is, the first two witnesses say three persons assaulted the coach, and one shot into the coach, and by that means Mr. Thynn was killed by the shot out of the blunderbuss: and the surgeon does say that these four bullets were found in his body.

INT.—He says, my Lord, he cannot tell how many bullets were in. He did not charge it himself, but he fired it, he says.

SIR F. W.—He confesses he fired it, then?

SIR W. ROBERTS (foreman of the jury).—My Lord, the jury desire to know if the Polander can tell who did charge it?

L. C. J.—Ask him who charged it.

INT.—He can tell, my Lord, he says.

L. C. J.—It will not be very material that, for his evidence can charge nobody but himself.

With prisoners being encouraged to blurt out confessions in open court after having pleaded Not Guilty, it is a little difficult to see where justice comes in! However, neither the jury nor the Lord Chief Justice pressed the question.

At this point the two justices of the peace, Mr. Bridgman and Sir John Reresby, who had examined the accused immediately after their arrest, were called. Mr. Bridgman testified first, and the gist of his testimony was this: Borosky, "the Polander," had confessed that he was present when "the Captain," Vratz, stopped the coach, that he fired the blunderbuss by the Captain's order, and that the Captain had instructed him to fire as soon as the coach had been stopped. It was also brought out that he had come to England at the request of Count Königsmark, but this was not admitted by the Court. So much for the Pole. The testimony was interpreted to him, and he agreed to its accuracy. Then came the confession, much less frank, of Captain Vratz, who had led the attack. Vratz deposed that he had challenged Mr. Thynn to a duel and that Thynn had refused to fight; that he had therefore determined to force the issue, and had stopped the coach for that purpose; that Borosky had fired by mistake, and that he had told Borosky not to fire unless Thynn again refused to meet him. It was a very fishy story and it was so regarded by the court. On the deposition being read to the Captain he amplified it somewhat by saying that, knowing that dueling was prohibited by law in England, he had thought that he could force Thynn to fight by attacking him, and that he had only brought two men to hold off any servants that Thynn

might have with him. This was only making a bad matter worse, and piling an impossible story on an improbable one. Vratz was then asked what affront Mr. Thynn had given him to provoke him to such measures, and he replied that Mr. Thynn had "used very ill language of Count Königs-mark . . . and so of himself too . . . he called him Hector and gave such ill language as was never to be suffered." The most curious thing about this was that, according to his testimony, the Count had known nothing at all about this alleged abuse and that, indeed, he had himself been informed at second hand. He was even vague as to when and where, if ever, he had seen Mr. Thynn, and vaguer still concerning his challenges which he "had sent by post as he had never a gentleman to send by." Now came the turn of Lieutenant Stern, the third and last of the party. His deposition, like that of Borosky, was fairly straightforward. He admitted simply that he had been hired by Captain Vratz as a servant; that the Captain told him that he had a quarrel with a gentleman; that the Captain had given him money to buy the blunderbuss, and that he had been on the scene when the murder was committed. He seems not to have known directly that murder was intended, but he did admit that before the arrival of Borosky in England the Captain had urged him to find an Italian who would stab an enemy for him. He confessed the purchase of the blunderbuss, and that he and Vratz had loaded it together. Sir John Reresby, called to the stand, merely confirmed all this, with the addition that it was his understanding that Stern, in the initial examination, said that his part in the affair was simply to keep off the crowd while Captain Vratz and Mr. Thynn fought it out. There is certainly some doubt as to the entire guilt of Borosky and Stern. Vratz may quite well have made them

think it was a duel he was forcing, and not a murder. Borosky *may* have fired unintentionally in the excitement, but it is very unlikely. The whole affair looks about as much like a cold blooded, deliberate murder as anything could.

And now, having settled the noose well around the neck of the unhappy trio, it remained to convict Count Königsmark of direct complicity in the murder. Was Vratz simply in Königsmark's pay? Up to this moment both prosecution and Court were hot on the heels of justice, but now the prosecution found the Court acting more or less in the rôle of counsel for the defense. It seems very probable that the presiding judges had been instructed that it was the desire of Charles II that Königsmark should not be convicted. Certainly, the Count was favored far more than the others.

The first witness called against Königsmark was one Frederick Hanson. This man was the tutor of the Count's younger brother who, it will be recalled, was living in England at that time. Hanson was, naturally, a reluctant witness and a difficult one to handle. On direct examination he testified in substance that Königsmark had come to England secretly not long before, and that, both before and after the murder, he had lived in obscure lodgings under an assumed name, seeing not more than two or three of his friends. On the night of the murder, he had gone to see the Count and had "found the Count in his night-cap and night-gown ready to go to bed." The cross-examination, hard sledding as it was, brought out more. Hanson admitted that Königsmark had told him that he had heard, more hearsay, that Thynn had used abusive language towards him, and that he would like to know what the legal consequences would be if he called Thynn to account. As a result of this,

Hanson went to the Swedish Envoy and asked his advice in the matter. The Envoy told him that while he knew nothing of English law he did know that Count Königsmark would find himself in very hot water if he meddled with Mr. Thynn. Hanson did his best to make Königsmark's conversation with him, and his with the Swedish Envoy very casual affairs, but he was not entirely successful. The witness was an adept at hair splitting and the prosecution was not able to make him define just what he understood by the phrase "call him to account." The testimony at this point is interesting enough to quote:

HANSON.—Count Königsmark spoke to me in the German language; I spoke to the Swedish agent in French; and when I was before the King and Council I spoke in English; therefore I desire no evil construction be made of it. I cannot remember the Count spake of killing or dueling; on the contrary, I can swear for Count Königsmark this, that I am confident he never told me that he had resolved or would fight with Mr. Thynn or would call him to account; but, *if* he should call him to account, what would be the consequence of it.

SIR F. W.—Call him to account about what?—The Count, in familiar discourse with me, did tell me that he had heard Esquire Thynn had spoken abusively of him.

SIR F. W.—How had he spoken abusively of him?—He reflected upon his person and upon his horse.

MR. W.—Was there anything in that message about marrying my Lady Ogle? (This was Mrs. Thynn.)—That was the last part of the question, that, if he should meddle with Esquire Thynn, what the consequence might be, if the laws of England would be contrary to him in the hopes or pretensions he might have to my Lady Ogle.

MR. W.—You mince your words mightily. Pray remember

yourself. Did he speak of killing Mr. Thynn, or that Mr. Thynn should be destroyed?—No. His phrase was, if he should have an advantage of him, when he should meddle with him, or call him to an account, what the consequence might be. I can say this upon my conscience.

SIR F. W.—Sir, you are in a place where you are sworn to speak the truth, the whole truth, and nothing but the truth. What relation have you to Count Königsmark's family?—I have no relation to the family at all.

SIR F. W.—Are you not the governor to the young Count?—The Countess has given me her younger son, for me to be his companion in his travels.

SIR F. W.—Sir, I ask you a plain question; let it lie at your own door if you will not speak the truth. Had you any conversation with Count Königsmark, wherein he did desire you to ask advice of the Swedish Envoy, or resident here, about dueling Mr. Thynn, or in case he should kill Mr. Thynn, or upon any such account?—My Lord, I say this was spoken in several languages, by the Count in Dutch, by myself to the Envoy in French, and I do know I swore before the King and Council, but I cannot lay this to Count Königsmark, for then I must forswear myself.

SIR F. W.—Sir, you can answer me all my questions in English, if you please, what the discourse was.

The witness was manifestly a shifty liar, and one cannot but believe that, if the court had not been in the business of protecting Königsmark, it would have dealt severely with him. If his manner of testifying was not contempt it was curiously like it. After this, Hanson was permitted to read a statement in which he merely recapitulated his previous testimony. At this juncture, Sir Frederick Winwood tried to introduce in evidence the signed statement of Hanson's testimony before the King and Council:

SIR F. W.—Pray sir, will you look upon that paper? You signed it.

L. C. J. NORTH.—Only to recollect your memory.

Hanson was shown his examination before the King and Council.

L. C. J.—Now you have read it over; that there is under your own hand. Do you now again deliver the substance of your discourse you had with Count Königsmark, as you will stand by it?—I see that there are expressions in this paper . . .

L. C. J.—Speak not what is in that paper, but what discourse, as near as you can, you had with Count Königsmark.

Hanson, thus relieved from the necessity of sticking to his original examination, went straight ahead and told the same story that he had been through twice before. He was letter perfect in that. Sir Frederick tried hard to trip him, but he was too slippery to be caught. The prosecution gave up, so far as this point was concerned, and shifted its attack to an inquiry as to just what Hanson knew about the relationship between Königsmark and Borosky. Many questions and much dodging, on the part of the witness, brought forth the scanty information that the Count had told Hanson that Borosky was a very able man with horses, and that he had sent for him from abroad to take charge of his stable. Further, that on Borosky's arrival he, Hanson, at the Count's request had bought him a riding-coat and a ten shilling sword. Meager as this was, it was no small matter to get it out, and the testimony is full of such irrelevancies as Hanson's:

I remember very well what passed between the Count and him (Borosky), for I have thought of it. He spoke to him and called

him Thou, as to his servant, and asked him where he had been all the while. And he answered, he had been at sea, and tossed up and down.

No wonder the prosecution gave up in disgust! Since Hanson had seen Königsmark on the night of the murder, Sir Frederick now tried to bring out the Count's reaction when Hanson told him of the crime. It was useless. According to Hanson, the Count dismissed it as a trivial matter. This, needless to say, is hardly consistent with the earlier testimony of the witness. When a man hears of the murder of his enemy he is more than apt to show emotion of some kind. And here, to show the manifest bias of the Court, the following may be given.

L. C. J. (to Hanson).—Look you, sir; now will you in French deliver this for the benefit of those jurymen that don't understand English.

MR. WILLIAMS.—We pray, my Lord, that our interpreter may do it.

L. C. J.—When a man can speak both languages he needs no interpreter. He is his own best interpreter.

MR. W.—My Lord, I will tell you why I ask it. There is a great deal of difference, I find, where you examine a man with the hair, and where you examine him against the hair; where you find it difficult to make a man answer, you will pump him with questions, and cross-interrogate him to sift out the truth. Now, if you leave this man to the interpretation of what he himself hath said, he will make a fine story of it and we shall never be the wiser.

L. C. J.—You may examine him in French, if you will.

MR. W.—And I understand none but pedlar's French!

SIR F. W.—The truth of it is, what your Lordship says cannot be opposed regularly, but I do appeal to your Lordship, and all the

Judges and all the Court, whether this man does answer like an ingenuous man. You see, he shifts.

L. C. J.—I do not see it, nor do I believe any see he shifts in anything you ask of him. Either he tells you what the question is, or the reason of it. How far that is a reason is left for the jury to consider.

The prosecution finally decided to ask the witness three questions, to which they got three answers which left them exactly where they were before. And now Königsmark himself interposed.

SIR N. JOHNSON.—My Lord, the Count desires to know if he be permitted to make his defense against these witnesses.

Against them! They had done their best for him!

L. C. J.—No. He is not to make his defense now. But, pray tell him, if my Lord have a desire to ask any questions of this witness, he may ask what he pleases.

L. C. J. NORTH.—Let the question be put to the interpreter, that we may know what the question is before the witness gives an answer.

MR. CRAVEN.—He asks him if he has not seen him oftener in his lodgings undressed than dressed, and whether he was not to take physic from his physician?

HANSON.—I do not remember that. In all the time I saw Count Königsmark, I saw him dressed four times in his coat. I cannot say I remember three times in all. The first time, when he came, he was in a campaign coat but, all the time he was in his lodging, as I remember, he was in his nightgown and cap. As to the other part of his question, whether I heard that he took physic, I say this: when I saw Count Königsmark first at his lodging, when I came to him on the Sunday evening, I was told the Count was in

bed; it was late, but I ventured to go into his room, and sat a quarter of an hour there; and afterwards the doctor came in, Dr. Frederick. I saw him oftentimes at his lodging and, at the same time, the young Count was sick of an ague. And when he came one evening to see the young Count, I asked him what was the distemper the Count had. The doctor answered me that he had not told anybody that the Count was sick, or what he was sick of, but he hoped in God in a short time he would be recovered.

This nicely prepared the way, as both Königsmark and the witness hoped it would, for the Count's defense, which was that he was in hiding because he was ill of a disease that he did not want known. It was a weak enough story because, even granting it to be true, there was no reason why he should not be ill and conspiring against Thynn's life at the same time. There was apparent motive, if Hanson's slip concerning Lady Ogle were true, and the Count's connection with the actual murderers was plain. But the real guilt was still cloudy. It was to remain so.

The next witness was unimportant, and served merely to check Borosky's movements when he first arrived in London but, after him, Dr. Frederick Harder, the Dr. Frederick of whom Hanson spoke, was called. He, like Hanson, however, was a friend of the Count's, and nothing was elicited that was actually incriminating, although both sides managed to better their cases to a minor extent. On the one hand, Harder testified that the Count had really been ill and under his treatment; on the other, he admitted that Königsmark was in disguise and living under an assumed name and, further, that both Vratz and Borosky were intimates of the Count's establishment. There was nothing new in all this. The circumstantial evidence was suspicious,

but it was not incriminating. The prosecution was faced with a difficult task. The Count had certainly not taken an active part in the murder. If Vratz was acting under his, the Count's, orders, it could not be proved except by the admission of the principals. So far as circumstances were concerned, Königsmark had seen to it that they should be as much in his favor as possible. The fact that he was in hiding and in disguise was capable of more than one explanation.

Several witnesses were now called, the keeper of the lodging house where Königsmark had stayed, the Count's servant, a boy of fifteen, the servant's father and the cutler who had sold the sword that was given to Borosky, but nothing of any real importance was adduced. The Crown did its best to show that the sword and blunderbuss had been provided by the Count, but they failed entirely to prove that these weapons had been given for any illegal purpose. They did bring out the fact that the Count had left his lodgings, ill or well, on the morning after the murder and had gone, still in disguise, to the house of Derick Raynes, a Swede, living at Rotherhithe; that he had stayed with Raynes from Monday until Thursday morning and, that when he left there, redguised by Raynes, he "took water" and went to Deptford. Certainly, these were the actions of a guilty man but, in themselves, they did not prove him guilty.

The last two witnesses for the prosecution were the two officers who had arrested the Count at Gravesend, as he was about to embark on board ship. According to the testimony of these two, while Königsmark did not admit the murder, he did not deny it. The testimony of both men had significant bits, however, which are worth quoting. The first, John Kid, said in part:

Coming up the river (after the arrest) the most of my discourse was about material affairs: a sergeant that had the command of a file of musketeers which the deputy governor sent to guard the Count to Whitehall, a gentleman sitting there by me, was asking me concerning Mr. Thynn's murder; I told him that I was at Newgate on Friday, and there I saw those that had done that barbarous deed. With that, my Lord asked what lodgings there were in Newgate, and whether the Captain had a good lodging? I told him a very good one. He asked me whether he confessed anything. I told him he had confessed some particulars and, said I, it is the most barbarous thing that ever was done. Certainly, says my Lord, this Mr. Thynn must have correspondence and commerce with some lady that this Captain knew that belonged to the Court, or he would never have done it. As for the Polander, I told him that he had confessed and that he had wept mightily. With that my Lord seemed very much concerned, and took up his clothes and bit them, and sat awhile up, but was very much discomposed, and then desired to lie down.

Königsmark appears to have been very much upset on being told of a confession that, according to his own story, did not involve him. The other officer, Gibbons, amplified this somewhat. Gibbons belonged to the Duke of Monmouth, Thynn's patron, and seems to have believed that the murder was political, and directed at the Duke as much as at Thynn himself. Said he to Königsmark:

I do not come upon his command (Monmouth's), but you have killed a very good friend of mine, and a countryman, and if Providence had not ordered it otherwise, you had killed a more particular friend of mine, and a master that I had served many years. Said he, I don't think they would have done the Duke of Monmouth any injury. After that he walked up and down awhile, and then, said he, 'Tis a stain upon my blood, but one good action

in the wars, or a lodging upon a counterscarp will wash away all that.

If Königsmark was innocent of any complicity in the murder these two scraps of testimony certainly did not sound like it.

Chief Justice Pemberton now addressed the Count, the evidence for the Crown being closed, and summed up the points that had been made against him. To these Königsmark answered categorically.

L. C. J.—First, let him answer what his reason was to come into England in such a manner incognito, at this time, and lie concealed, when he had been in England before, and lived in a mighty good equipage and condition?

MR. CRAVEN.—My Lord, he says that hearing that there was a peace between Swedeland and England and Holland designed, and likely to be confirmed suddenly against the French, he came with a design to serve England, and to raise a regiment of horse here for the service of the King of England.

COUNT K.—If any such peace should be, if any appearance of an alliance between England and Holland and Swedeland, I had a design to propose if I could have a regiment.

L. C. J.—Why did he come unknown and in disguise?

SIR N. J.—Secondly he says, my Lord, the reason of his coming incognito was because he had a distemper upon his arms and breast; and having formerly tried and employed this physician, and having experience that he was an able man, he was resolved to lie privately until he had cured himself; for he could not drink wine, nor keep company, having this distemper upon him; and he was afraid, if he had kept company, it would have hindered his cure, and he should not have been so soon cured as if he kept in the house; and he says that his equipage could not come till after, and he would not willingly appear till he had his equipage, as a man of his quality

ought to do; and these were his reasons that made him keep private.

L. C. J.—Pray ask him upon what occasion he did change his lodgings so often?

SIR N. J.—He says that his first lodging was changed because it was too cold for him; and he says, the next lodging where he was, those that were there can tell, the room where he was smoked so cruelly that he was not able to endure it. And he says he liked the house so well that he sent to see if the chimney could be mended, and it was not to be done, otherwise he had gone back to that house, and he has the man and his wife to bear witness of it, if you please.

L. C. J.—Let him call them.

They were called, but they did not appear.

L. C. J.—Then ask my Lord this, to what purpose did he bring over this Polander here? He ought to consider of that, and give an account why he had brought him hither.

INT.—He says this Pole was taken into his service when he went to Tangier, when he went several thousand miles to do the King's service; and he had designed at that time to bring him into England to dress his horse after the German way.

L. C. J.—Had the Polander been a groom formerly?

INT.—He says, he thinks he had been groom to his uncle before.

L. C. J.—But to what purpose did he bring him hither?

INT.—He says, there was a great discourse about Strasburg's being besieged, and he did design to buy some horses, for every one did arm themselves; and he says he sent over 1,000 pistoles, to be answered by the merchants here, to buy horses.

L. C. J.—Hath he anybody to prove it?

COUNT.—There is Mr. Risby, Mr. Hanson, and my brother.

YOUNG COUNT.—My Lord, I had a bill of exchange.

L. C. J.—For how much money, my Lord?

Y. C.—For 1,000 pistoles, to buy horses; and he has bought one horse, and was to buy more.

L. C. J.—Do you hear, gentlemen, what he says? He came over to buy horses, and he returned 1,000 pistoles for that purpose, and his brother does attest there was such a sum returned by bills of exchange for the buying of horses.

INT.—My Lord, he says he does fear that the jury that do not understand English do not understand his reasons for being in a disguise.

L. C. J.—Cannot he give an account of it himself?

MR. WILLIAMS.—No, my Lord, his evidence must be interpreted to them by the Interpreter.

L. C. J.—The Doctor's evidence hath been heard already about the same matter.

SIR N. J.—He desires, my Lord, to know this; whether he may not say the same things over again to the jury in French? There are a great many persons of quality that understand it, and they will see whether he speak true.

L. C. J.—Let him, if he pleases.

SIR F. WINWOOD.—But then, my Lord, I hope your Lordship will tell the jury it goes for nothing without proof.

The Count then addressed the jury in French.

L. C. J.—My Lord, I do not know whether the gentlemen that are of your right hand heard you or not.

JURYMEN.—We understand not French.

Then the Count said over again in German.

INT.—He says, that if it had not been for the great stormy weather, the Polander had been sooner in London, for he sent for him before. He says, the letters go from Strasburg to Hamburg in seven days, and that most commonly ships do come from thence in eight days, but in a great deal less time than the Polander came over in. And he says, that he writ four months before to fetch

the Polander over, and he might have been here long ere now if it had not been for the weather.

L. C. J.—Then, my Lord, I would ask you some more questions, which it concerns you to answer. Upon what occasion did you make your discourse of Mr. Thynn's death to Mr. Hanson? Had you any discourse with him and upon what occasion?

SIR N. J.—My Lord, he says, in common discourses it is impossible to give an account of the discourse, or to remember the occasion of it so long ago.

L. C. J.—Ask him if he had any quarrel with Mr. Thynn, or knew Mr. Thynn?

SIR N. J.—He says, my Lord, that he never had any quarrel with Mr. Thynn, nor, to the best of his remembrance, with his eyes never saw Mr. Thynn.

L. C. J.—Then, I ask you this, my Lord; did you ever hear Mr. Trynn had married my Lady Ogle before you last came into England?

INT.—He says he never heard of it until he was going to Strasburg, and then the whole town did talk of it.

L. C. J.—How long is that ago?

INT.—Half a year ago.

L. C. J.—Then it was before his last coming into England?

SIR F. W.—My lord, his discourse with Mr. Hanson was not when he was last in town, but before.

L. C. J.—Then pray ask him this; what occasion he had to ask the boy upon Sunday whether horses might be rid about the town of a Sunday?

INT.—He says, my Lord, this is a very strange thing, that he should go and ask a scullion boy whether people might ride on Sundays, when he himself over and over again has rid upon Sundays to Hyde-park, as many persons of quality do.

L. C. J.—Has he anybody to prove it?

SIR N. J.—Here is Major Oglethorp. (Who, with other gentle-

men testified they had seen him riding divers times on Sundays in Hyde-park.)

L. C. J.—Then that question signifies nothing; there could be nothing in that question.

SIR N. J.—My Lord, he desires that I may be examined concerning the boy, of what I heard by chance from the boy himself, and I will give you an account of it upon my faith and reputation.

L. C. J.—Do so, Sir Nathanial, say what you can say.

SIR N. J.—My Lord, I having had the honor to serve awhile under my Lord's father, I was desirous, knowing the honor of the family, and bearing a great respect to it, to do my Lord all the reasonable service I could. So, hearing my Lord was taken, and in Newgate, I went to wait upon him; and, coming there, Mr. Richardson told me there was a little boy waiting at the Count's door for his wages, so he said. So I spake to the boy and asked him, What do'st thou stay for? He told me, for his wages. Said I, Certainly my Lord will pay you your wages. How long have you served him? He said, A little while; and then, said I, if you lived with him, what do you know of his business? And then, of himself, he began and told me: Only this I know, that Vratz was in my master's chamber that night, and the Polander that night went out with a pair of boots under his arm, and more than this I do not know. Said I, Boy, who do you serve? Says he, I have no master at present; but then, of his own accord, he told me, Sir Thomas Thynn has promised me a place and, in the meantime, I am, says he, to go to serve my Lord Privy Seal. And so, my Lord, I gave him twenty shillings for his wages.

INT.—My Lord desires the boy may be asked whether he did not go to fetch physic.

L. C. J.—Ask him. Where is the boy?

WATTS (the boy).—No, I do not remember it.

L. C. J.—Now, you should put the Count in mind.

SIR F. WINWOOD.—We observe what a sort of interpreter Sir Nathanial Johnson is! He speaks more like an advocate than an

interpreter. He mingles interpreter and witness and advocate together. I don't know what to make of him.

L. C. J.—The Count had taken physic that day.

SIR THOMAS THYNN.—My Lord, I desire it to be heard: I never spake to the boy in all my life.

MR. THYNN.—Nor I. But he gave the same testimony he gives now before the King and Council.

L. C. J.—Look you, Sir Thomas, it does not concern you at all to speak to that. There is no reflection made upon you in it. But, my Lord Königsmark, it will concern you a little to show upon what occasion Captain Vratz came to you that night that Mr. Thynn was killed.

INT.—He says, my Lord, he can't tell why he came there. It is a proper question to ask Captain Vratz himself.

L. C. J.—That can't be.

INT.—He says, my Lord, he kept his chamber at that time. He had taken a cold upon his taking physic, and the Captain came to give him a visit. He never reflected what any one came for. He was lying upon his bed.

L. C. BARON.—Pray, ask my Lord this; why this man that was sent over to attend horses should come upon the Friday, and a campaign coat be bought him on the Saturday, and he furnished with a sword on the Sunday?

INT.—My Lord, the noise is great, but I suppose your Lordship desires to know what was the reason he bought a sword for him and a coat?

L. C. B.—Ay, and how came he by the buff coat?

INT.—He says he had that before.

L. C. B.—But why must he have such a strong basket-hilted sword furnished him in a day's time?

INT.—He says, my Lord, as to the clothes, when he saw him with all his clothes torn, he must of necessity get him a coat, or else he was a shame to him and his service. And as for the sword,

it was no more, he says, than what servants of his bulk and making use to wear.

SIR N. J.—And he says all the servants of gentlemen in Germany wear such broadswords.

L. C. J.—You know it yourself, Sir Nathaniel Johnson. You have traveled there.

SIR N. J.—Yes, my Lord, they do. And the Poles much broader and greater swords than the others. Here is one in court that hath a great broadsword now by his side.

L. C. J.—Now, my Lord, it will import you to give some account how you, having brought over this Polander, as you say, to choose horses and help you in the management of them, to take care of them in the nature of a groom, how you came to part with him to Captain Vratz as soon as he came over.

INT.—My Lord, he says being that he was sick himself, and there was no hopes of the alliance between England and Holland, he had no such occasion for him as when he wrote for him, and therefore saw no reason to keep him.

L. C. J.—How long was it before that, that he wrote for him?

COUNT.—My Lord, after the siege of Strasburg, when everybody thought there would have been a war, but it was not so; therefore I had not need of him, but he had been seven weeks at sea and, my Lord, it is a common thing in Germany.

INT.—He says, it is a common thing in their country to give servants away if there be no need for them.

COUNT.—My Lord, it is a common thing in Germany. It may be, it may not be, so much used in England to give a servant away.

L. C. B.—What, the next day that he comes over?

L. C. J.—What say you, Sir Nathaniel Johnson?

SIR N. J.—Yes, my Lord, it is very frequent in Germany to give a servant away if there be no use of him, for these Polanders are like slaves.

INT.—And, my Lord, he says that Mr. Russel does know that the merchant that sent him over hither is a man of good repute;

and if this man had had an evil reputation in Germany he would not have sent him.

RUSSEL.—My Lord, I know very well he is a man of very great credit in Hamburg, and of great estate.

L. C. J.—Did he send over this Polander?

RUSSEL.—Yes, my Lord, so I understand.

L. C. J.—Can you speak to his credit, Sir Nathaniel Johnson?

SIR N. J.—Of the merchant's credit, I can, my Lord. I know him to be a man of considerable estate and credit. He is a man of such reputation that he would not send a man of ill reputation.

L. C. B.—Oh, sir, "Nemo repente fit turpissimus." He could not be so ill a man at the first dash. He must be a man probable for such a service.

SIR F. WINWOOD.—You may observe, my Lord, how Sir Nathaniel Johnson, who is interpreter in the case, is a witness, and argues for the prisoner, too.

MR. WILLIAMS.—Pray, Sir Nathaniel, is "a recounter" the killing of a man after this manner?

SIR N. J.—A recounter is another sort of thing, sir. You don't speak as if you were a soldier.

MR. W.—My being a soldier or not is nothing to the business. But the Captain said he intended to have made a recounter of it.

SIR F. W.—My Lord, we desire to take notice of Sir Nathaniel's forwardness, for it may be a precedent in other cases.

L. C. J.—What! Do you talk of a precedent? When did you see a precedent of a like trial of strangers that could not speak a word of English? But you would fain have the Court thought hard of for doing things that are extraordinary in this case.

MR. CRAVEN.—My Lord, he desires he may inform the jury what he sent for this Polander for.

L. C. J.—Let him.

The Count told his story to the jury in French and German.

L. C. J.—My Lord, another thing is this: how came your Lordship presently to go away in such a private, secret manner, and to direct your clothes to be sent, as it were, to Windsor? And yourself to go away, and to make such a private withdrawing of yourself down the river in this manner?

MR. C.—My Lord, he says that one Markham, that is here, came and told him that upon the killing of this man by the Polander and the Captain, who were taken in such a fact, there was a discourse of it that it might turn to his prejudice, and that the common people do commonly fall upon strangers; that his tailor told him that he heard the common people name him as concerned in it, and that he believed, if the common people did catch him, they would tear him to pieces, and so his friends did counsel him that he would withdraw himself.

L. C. J.—Is the tailor here? Call him.

Markham was called and took the stand.

SIR N. J.—My Lord, he says that he was afraid the people might tear him to pieces before he could come to justify himself.

L. C. J. (to Markham).—Look you, friend, did you come to Count Königsmark's lodgings, after Mr. Thynn was killed, on the Monday morning?—Yes.

L. C. J.—What did you tell him?—I told him nothing, but I was sent there by Mr. Hanson. Says he, “Tell the Count that the Duke of Monmouth and several noblemen have been here.” Now I had not seen the Count at that time before, but he told me where he lodged. When I came there I told the Count of it, but he told me he knew nothing of it, but, said he, I am sorry if any such thing be done.

L. C. J.—But what did you say his friends advised him to do about it?—I did say nothing of it. That was afterwards.

The Count here spoke to the witness in German.

L. C. J.—What was afterwards?—I was told that the people said, if he were taken he would be knocked on the head.

L. C. J.—What time afterwards was it?—After he went away.

L. C. J.—Who told you so then?—Mr. Hanson told me so then. I would not tell a lie for all the world.

COUNT.—He can tell also when I went away. (The rest he gave in German.)

INT.—He says this man can witness that he asked his man what money he had left, and he told him that he had not above £10 or £11; so he put his hand in his bag and took out some, and put it in his pocket.

COUNT.—So ill was I provided for an escape.

L. C. J.—Ask him that question? Do you know anything of what money he took with him?

MARKHAM.—No. I saw him take a handful of silver, but what it was I cannot tell.

MR. THYNN.—He had £7 or £8 about him when he was taken.

INT.—He desires leave to tell it to the jury. (This he did.)

L. C. J.—Now, my Lord, this will require some answer: how came you to tell those gentlemen that took you that you believed Mr. Vratz and the rest would have done the Duke of Monmouth no harm?

INT.—He says, the people told, when he was taken, that the Duke of Monmouth was in the coach, and that they did follow the coach a great way, and would not do the action till the Duke of Monmouth was out of the coach.

COUNT.—They did tell me, the crowd that were about me, that those that were taken said that they would not do it till the Duke of Monmouth was out.

INT.—And he says, that gave him sufficient reason to say to Mr. Gibbons that he did believe that they had no design upon his Grace the Duke of Monmouth.

L. C. J.—He heard it so commonly, it seems. Now, my Lord, there is one thing more that you should explain yourself in, what

you meant by this when you said it would be a stain upon your blood, yet one noble act in war, or the lodging upon a counterscarp, would wash it off.

INT.—He says, my Lord, that though he knew himself not guilty of anything, yet his being taken upon suspicion and clapped up in prison would be a great disgrace to him, and would be worse represented in his own country than the thing itself was, it being not the custom of his country to take persons of his quality prisoners in that manner.

L. C. J.—Now, my Lord, is there any person that you would have called to ask any questions of? If you have, they shall be called.

COUNT.—No, my Lord, but if you please to give me leave to tell something that may be necessary. (Here he spoke in German.)

SIR N. J.—My Lord, he says, if you will give him leave, though it does not come very well from himself, yet he desires to say something for his own reputation.

MR. WILLIAMS.—He should be armed with witnesses to make his defense.

L. C. J.—It is fit for any men that stand here to say anything that is reasonable for themselves. My Lord, if you can speak anything that you apprehend the jury can understand, speak to them what you please, so as they understand it, but do not be too long.

MR. CRAVEN.—My Lord, if your Lordship please, he says he would speak it first in French and then in German.

L. C. J.—Ay, but then the Englishmen of the jury will not understand a word of it. He had better speak it in English to the jury.

L. C. J. NORTH.—My Lord, it is an indifferent thing. It may be interpreted, not being matter of fact.

SIR N. J.—My Lord, he says it is a great happiness in all his trouble that he was in a country where he was to appear before a Protestant judicature, himself being a Protestant and his forefathers also. He says that his forefathers, under Gustavus Adolphus,

were soldiers, and did there, with their swords in their hands, and the loss of their blood, endeavor to settle the Protestant religion in Germany and protect it there. He says that it has been the honor of himself and his family that they have always been ready to venture their blood and their lives for the advantage of the Protestant religion, as the examples of his grandfather and father do show; and there was never anything done by his family, but what was done for the honor of his country and his religion. And he says, that if any of his former actions can give any the least suspicion of his being guilty of this or any foul act, he is very willing to lay down his life, and very willing to have it cut off immediately.

COUNT.—Immediately!

SIR N. J.—He says that he is very ready, upon all occasions, to serve the King of England, and that he loves the English nation so well as always to be ready to do anything to serve them.

COUNT.—Without any interest in the world, against the will of all my relations; and I have brought my brother into England to be brought up into the Protestant religion, to show inclinations to the religion and the English nation.

Was there ever such humbug heard in a court before or since? The mountain labored and brought forth a mouse. To not one question had the Count returned a direct, ingenuous answer. He had dodged, shifted and hedged. His very attitude proclaimed that he had something to hide. And in all this the Lord Chief Justice had stood at his right hand, seeing to it that not an arrow shot by the not too adroit prosecution should reach its mark. In 1682 the courts were still, to a considerable extent, under the thumb of the king. Charles had let it be known that he would not be sorry if Königsmark were acquitted. That was enough. Every barrier was at once thrown up against any real chance of conviction. And, though there were no more than circum-

stances, and slight circumstances, against the Count, one cannot but be convinced of his guilt, if only because of the means taken to prove him not guilty.

The case for the Crown was now closed. The Crown counsel made their closing speeches, and very sensible speeches they were too, showing the telling points against the Count and commenting on the flimsiness of his explanations. Then, Lord Chief Justice Pemberton proceeded to charge the jury. He was brief, but clever. He stated the facts against the Count without comment, and then he gave the Count's replies, also without comment. He knew well that any commentary would be fatal to many of Königsmark's alleged explanations. It being late in the afternoon when his Lordship had finished with his charge, after an officer had been sworn to keep the jury, the Court adjourned for a while. Returning in half an hour, they sent for the jury, who came in and answered to their names. The verdict was then delivered:

CLERK OF COURT.—Gentlemen, are you all agreed of your verdict?

JURY.—Yes.

C. OF C.—Who shall say for you?

JURY.—Foreman.

C. OF C.—George Borosky, alias Boratzi, hold up thy hand. (To the Jury.) Look upon the prisoner; how say you? Is he Guilty of the felony and murder whereof he stands indicted, or Not Guilty?

FOREMAN.—Guilty.

C. OF C.—What goods and chattels, lands and tenements?

FORE.—None, to our knowledge.

Captain Vratz and Stern were found guilty after the same fashion, and then Count Königsmark was called:

C. OF C.—Charles John Königsmark, hold up thy hand. How say you, is he Guilty of the felony whereof he stands indicted as accessory before, or Not Guilty?

FORE.—Not Guilty.

COUNT.—God bless the King and the honorable bench!

Well might he bless them! The jury was dismissed, and the court ordered a recognizance to be taken from the Count, with three sureties, to appear the next sessions, and to answer any appeal if one were brought. After this, the judges went away, and the Recorder, with the Lord Mayor and Aldermen, stayed to pronounce sentence on the convicted:

C. OF C.—Keeper, set George Borosky to the bar. Hold up thy hand. Thou standst convicted of murder, for killing Thomas Thynn Esquire. What canst thou say for thyself why the Court should not give judgment upon thee to die according to law?

INT.—He says, he prays God to have mercy upon him.

C. OF C.—Tie him up. Set Christopher Vratz to the bar.

INT.—He says, he hears he is condemned, but he was never rightly examined or fairly tried.

C. OF C.—Set John Stern to the bar.

INT.—He says, he did it for the Captain's sake. He went as a second along with him.

Then, the prisoners all being tied up by the executioner, proclamation was made for silence and, after this, sentence was pronounced, and the prisoners were taken back to their cells.

The trial, Sir John Reresby notes, lasted until five in the afternoon. The prosecution, he says, was very vigorous on the part of Thynn's relatives. Reresby was the first

to carry the news of the Count's acquittal to the King, "who seemed to be not at all displeased at it"; but the Duke of Monmouth's party, many of whom had appeared at the trial in the hope of adding weight to the prosecution, were cordially dissatisfied that Königsmark had escaped. Nor were they the only ones. The verdict was generally unpopular, and the attitude of the Court came in for some very sharp criticism from members of the legal profession. However, what was done, was done. There was no doubt as to the Count's guilt and, as was pointed out by a distinguished jurist later, the cause of justice would have been far better served by permitting one of the principals to turn King's Evidence.

The attitude of the three prisoners aroused considerable interest, between sentence and execution. Borosky and Stern were broken and penitent. They stuck to the stories they had told in court and, if they knew anything that involved Königsmark, which is highly improbable, they kept it to themselves. Vratz, on the other hand, who had headed the whole affair, was unsubdued and defiant. The three were executed together on Friday, the 10th of March, on the spot where they had committed the murder. "Gibbets," says the *Domestic Intelligence* of the 9th, "are prepared, and many hundred standings taken up by persons of quality and others." Evelyn remarks that, "Vratz told a friend of mine who accompanied him to the gallows and gave him some advice, that he did not value dying a rush, and hoped and believed God would deal with him like a gentleman. . . . I went to see the corpse of Vratz, the King permitting that his body should be transported to his own country, he being of a good family; it being one of the first which was embalmed by a particular art, invented by one William

Russell, a coffin-maker, which preserved the body without disemboweling, or to appearance using any bituminous matter. The flesh was florid, soft and full, as if the person were only sleeping. He had now been dead near fifteen days, and lay exposed in a very rich coffin, lined with lead, too magnificent for so daring and horrid a murderer." Having let the chief conspirator off scot-free, and having embalmed the next most guilty in pomp and splendor, the balance was struck by hanging the much less guilty Borosky in chains. Stern was executed and forgotten.

The other actors in the tragedy are soon disposed of. Thomas Thynn lies buried at the west end of the south aisle of Westminster Abbey, and over him there is a marble monument on which is carved the spectacle of his murder. Königsmark left England almost immediately after the trial. It is said that, before leaving, he was challenged to fight by Thynn's friend, Lord Cavendish, and that they were to meet "on the sands of Calais." They never did meet, however, and the Count was left to go about his business. Königsmark went back into active service in the army, and died of pleurisy, so it is said, at the age of twenty-seven, four years after the events here depicted. Other authorities deny the pleurisy, and say that the Count fell in action. In any event, he was a reckless adventurer whose family seem to have been doomed to bring misfortune on themselves and others. The "young Count" of the trial was the famous Philip von Königsmark who became the lover of Princess Sophia of Hanover, whose husband, Prince George, was George I of England. Count Philip's strange disappearance is one of the most curious mysteries of history. With him the direct line died out.

Little Mrs. Thynn, or Lady Ogle, who had discreetly

stayed on the continent while all this had been going on, came back to England late in March and, before six weeks had passed, she married for the third time. She was still under sixteen. This third marriage, to Charles Seymour, Duke of Somerset, was destined to run its course. The Duchess died in her fifty-sixth year after having presented the noble Duke with thirteen children. It is probable that the lady found little happiness in life, after having been the innocent cause of so much unhappiness in others. The Duke was a cantankerous, priggish person, unlovable and difficult to live with. Somerset was known as the Proud Duke, and the length to which his pride took him is well illustrated by an incident that took place during his second marriage, for after his wife's death he married again at the green old age of sixty-four. The second Duchess, according to her own story, once ventured to tap the Duke on the shoulder with her fan, on which he started, and with an air of outraged dignity transfixes her with, "Madam, my first wife was a Percy, and she never took such a liberty!" Poor lady! She had bad luck with husbands.



# RAPIERS AT MIDNIGHT



## RAPIERS AT MIDNIGHT

*The Trial of Charles, Lord Mohun,*

*Before the House of Peers, for the Murder of William Mountford.—31st of January, 1692.*

THE Lords came down from their House, in their usual order, to the court erected for them in Westminster-hall, about twelve o'clock. Then the writ of certiorari, directed to the commissioners of oyer and terminer for the county of Middlesex, and to remove the indictment found before them, with the return thereof, and the record of the indictment, were read; after which, the governor of the Tower being called to return his precept, and bring his prisoner to the bar, the Lord Mohun was brought to the bar, the gentleman jailer of the Tower carrying the ax before him. After which the prisoner was arraigned.

The indictment sets forth:

That the said Charles, Lord Mohun (together with one Richard Hill, who was fled), not having the fear of God before his eyes, &c. on the 9th day of December, in the fourth year of the King and Queen, in the parish of St. Clement's Danes, in the County of Middlesex; in and upon one William Mountford, of his malice aforethought, did make an assault: and that the said Richard Hill, a certain rapier made of iron and steel, of the value of 5s. which he held drawn in his right hand, in and upon the right side of the body of the said William Mountford, near the right pap, wilfully, and of malice aforethought, did strike and thrust, giving the said

William Mountford thereby one mortal wound, the breadth of one inch, and the depth of twenty inches; of which said mortal wound, the said William Mountford, having languished until the 10th of the same month of December, died. And that the said Charles, Lord Mohun, at the time of the felony and murder aforesaid, feloniously, wilfully, and of his malice aforethought, was present, aiding, abetting, comforting, and assisting, the said Richard Hill, to kill and murder the said William Mountford, in manner aforesaid, against the peace of the said King and Queen, &c.

To which indictment the Lord Mohun pleaded *Not Guilty*.

*Mr. John Hudson sworn.*

Three nights before Mr. Mountford was killed, being at supper with my Lord Mohun and Mr. Hill, at the Rose Tavern, Mr. Hill began a discourse about Mrs. Bracegirdle,\* and said, he did not doubt of his succeeding in his amour with her, if he was not obstructed by Mountford, whom he designed to be the death of, (but I cannot say my Lord Mohun took notice of what he said): and this I heard Capt. Hill say, not only then, but several times before.

ATT. GEN.—Do you know anything more of this matter?

HUDSON.—That night Mr. Mountford was killed, I saw Mr. Hill and my Lord Mohun changed clothes at the play-house; my Lord Mohun had Captain Hill's coat on, and Mr. Hill had my Lord Mohun's on.

*Mr. George Powell sworn.*

About five or six days before Mr. Mountford was wounded, I was in company with Mr. Hill, who began on Mrs. Bracegirdle's health, and said, there was no bar between him and her, but Mountford, and was resolved to be revenged on him one way or other.

\* Mrs. Bracegirdle was the famous actress, who starred in Congreve's plays, and who was said to be his mistress.

Three nights afterwards, I was at supper with my Lord Mohun and Capt. Hill, and, the same discourse arising again, Hill whispered me, and said, he was resolved to have the blood of Mountford; and that night Mr. Mountford was wounded, I sat up with him; and, asking him how the matter happened, he told me, Capt. Hill killed him basely; for, whilst my Lord Mohun talked to him, Hill run him through; and that his sword was not drawn till after he received the wound.

*Mrs. Knight sworn.*

She deposed, that about four days before Mr. Mountford was killed, discoursing with Mr. Hill, he said, he was satisfied Mrs. Bracegirdle hated him; but she loved somebody, and he had thought of a way to be even with that body: that afterwards, Hill desired the deponent to speak to Mrs. Bracegirdle for him, and that she would give her a letter from him; and upon her answering, she did not care to make herself enemies; Hill replied, do you mean Mountford? and swore he should find a way with him speedily.

*Mrs. Elizabeth Sandys sworn.*

I dined with them at the Three Tuns in Chandos-street; and discoursing of Mrs. Bracegirdle, my Lord Mohun asked me, if I thought Mountford had lain with her? and presently after, said my Lord, this design will cost Hill fifty guineas. Mr. Hill said, if the villain offers to resist, I will stab him. Said my Lord Mohun, I will stand by my friend. Soon after, Hill desired Mr. Brough to borrow a case of pistols of Capt. Leicester; for he doubted, if the Captain knew of the design, he would not lend them to him; and Hill added, that he had a coach and six in Wych-street, to seize Mrs. Bracegirdle, and carry her into the country; and desired my Lord Mohun to meet him at the play-house at six, or he should be ruined; and my Lord gave him his honor to meet him. and said, he would stand by his friend.

*Mrs. Ann Bracegirdle sworn.*

Having supped at Mr. Page's, in Princes-street; about ten o'clock Mr. Page went home with me, and my mother and brother;

and coming down Drury-lane, there stood a coach by my Lord Craven's; the boot of the coach was down, and my Lord Mohun was in it; and two soldiers came and pulled me from Mr. Page, and four or five more came up, and they almost knocked down my mother; but she recovered herself and hung about my neck, so that they could not get me into the coach, and Mr. Page went to call company to rescue me; then Hill came with his naked sword, and struck at Mr. Page and my mother, but, company coming in, prevented the design; then Hill said he would see me home; and led me by one hand (his sword being drawn), and my mother by the other; and my Lord Mohun came out of the coach and followed us, as did all the soldiers, but they were dismissed: and as we went along, Mr. Hill said he would be revenged; and when we came home, Mr. Hill pulled Mr. Page by the sleeve, and said he would speak with him; but Mr. Page was pulled into the house, and Mr. Hill walked up and down the street, with his sword drawn.

My Lord Mohun and Mr. Hill were together; and when Mrs. Brown asked them, what they stayed there for; Hill answered, to be revenged of Mr. Mountford; whereupon, we sent to Mrs. Mountford, to prevent danger: and as I was listening at the door, the watch came by, and said to my Lord Mohun and Mr. Hill, gentlemen, why do you walk with your swords drawn? Said my Lord Mohun, I am a peer of England, touch me if you dare; then the watch went away, and about a quarter of an hour after, there was a cry of murder.

*Mr. Gawen Page sworn.*

He deposed, that on Friday the 9th of December, about ten at night, as he was leading Mrs. Bracegirdle home, there stood a coach at my Lord Craven's door, in Drury-lane, and two soldiers forced Mrs. Bracegirdle from him, and would have put her into the coach; and that Capt. Hill was there with his drawn sword, and gave the deponent several blows, and cried, you villain, stand; and my Lord Mohun was in the coach; but help coming in, they

were prevented carrying off Mrs. Bracegirdle: then the deponent conveyed Mrs. Bracegirdle home, and Mr. Hill went with them, but bid the soldiers begone, and my Lord Mohun followed at a distance: that, when they came to Mrs. Bracegirdle's lodgings, Hill pulled the deponent by the sleeve, and said, he would speak with him; and the deponent answering, that to-morrow would do better, Hill replied, to-morrow then; but, G—d d—n me, you will not go home to-night: then the deponent went into the house, and, about an hour and a half after, he heard an outcry of murder; and going into the street, he saw my Lord Mohun surrendering himself to the constable, and my Lord's sword was then in the scabbard: that the deponent then went to Mr. Mountford's house, and found him lying in his blood on the floor, and Mountford told the deponent, that he was barbarously run through, before he could draw his sword.

*Mrs. Mary Page sworn.*

My Lords, my husband went home with Mrs. Bracegirdle; and, hearing he had like to have been murdered, I went down to Mrs. Bracegirdle's lodgings, and found my Lord Mohun and Mr. Hill walking about the street, (but Mr. Hill's sword only was drawn then;) so I came into the house, and Mrs. Brown went out to them, and asked, why they stayed there? And Hill answered, they stayed for Mountford; whereupon Mrs. Bracegirdle desired me to go over to Mrs. Mountford's house, and speak to her, to send her husband word, that he should stay where he was, or come home with a good guard; and as I was going over, I saw that my Lord Mohun had his sword drawn: they were then walking before Mrs. Bracegirdle's lodgings, in Howard-street, (and might see any one that went to Mr. Mountford's house, and up Surrey-street,) and whilst I was desiring Mrs. Mountford to send away to her husband, I heard murder cried; and opening Mr. Mountford's door, he came in, and threw his arms round my neck, to support himself, and he said, Hill had murdered him; and I helped him as far as the parlor door, and then down he fell: then I went up the street, and called out murder; and my Lord Mohun came to me, and bid me take notice, he had no

hand in it; for, he said, his sword was not drawn: and I replied, he was with Hill, with his naked sword, but just before.

*Mrs. Brown was sworn, (at whose house Mrs. Bracegirdle lodged).*

She deposed, that when Mrs. Bracegirdle came home, she cried, and related how my Lord Mohun and Mr. Hill, with some soldiers, would have forced her into a coach; and added, that my Lord Mohun and Mr. Hill were then at the door; that thereupon the deponent went out to them, and asked, why they used Mrs. Bracegirdle in that manner? And my Lord Mohun answered, he protected her; and if it had not been for him, the rabble would have torn her in pieces: that he had no design upon her, for his part, but only to serve his friend: and that Mr. Hill's design was to take her out of town, and keep her a week, and see if he could persuade her to marry him: that Hill said, he should light of this Mountford; and the deponent demanding, what hurt Mountford had done him? Hill replied, I have been abused, and will be revenged; and the deponent went and told Mrs. Mountford of it: that half an hour after, or more, the deponent saw Mr. Mountford coming down the street, and she went to him, but he would not stay to let her speak to him; and presently after, Mountford met my Lord Mohun, and there passed several compliments between them; and my Lord told Mr. Mountford he had a great respect for him, and desired they might have no difference; but added, here is a thing fallen out between Mrs. Bracegirdle and Mr. Hill.—Mountford replied, has my wife disengaged your Lordship? If she has, she shall ask your pardon; but Mrs. Bracegirdle is no concern of mine: I know nothing of this matter; I come here by accident: but I hope your Lordship will not vindicate Mr. Hill in such actions as these are. Upon this, she heard Mr. Hill bid Mr. Mountford draw; and Mr. Mountford said he would, and drew his sword. But whether Mr. Mountford received his wound before, or after he drew his sword, she could not tell.

*Mrs. Brewer sworn.*

She deposed, that she lived next door to Mrs. Bracegirdle, and that she saw Mr. Mountford come down the street, and my Lord Mohun went to him and embraced him; and after some mutual salutations, Mr. Mountford asked, what made his Lordship there at that time of night? And my Lord answered, I suppose, Mr. Mountford, you are sent for; you have heard of the business of Mrs. Bracegirdle: and Mountford replied, no, indeed, I came by chance: that then Mr. Hill came up, and said, pray, my Lord, hold your tongue, this is not a convenient time to talk of this business; and would have drawn my Lord away: and Mr. Mountford said, he was sorry to see his Lordship assist Capt. Hill in so ill an action; and desired his Lordship to forbear. Whereupon Hill came up, and struck Mountford a box on the ear: says Mountford, D—n me, what is that for? And immediately Hill made a pass at him with his sword, before Mountford's sword was drawn. My Lord and they were all close together at that time, as well as I could discern.

*Then Lord Mohun's witnesses were called.*

*Mr. Brereton* deposed, that some few days before Mr. Mountford was killed, he (the deponent) was in my Lord Mohun's company, and heard him commend Mountford's acting,\* and say abundance of kind things of him; and desired the deponent to fix upon some time, that they might drink a bottle with him: and that afterwards, my Lord Mohun being at the deponent's lodgings, told him, that Mountford had been very civil to his Lordship, the night before, at the play-house.

*Eliz. Walker*, Mrs. Bracegirdle's maid, deposed, that her mistress sent her over to Mrs. Mountford's to desire her to send her husband word, that he should not come home without a good guard: for my Lord Mohun and Mr. Hill were walking about the street, and Hill with his naked sword: that the deponent went with Mrs. Mountford's maid, to look for Mr. Mountford, but they could not find him: that when she returned, my Lord Mohun and Mr. Hill were before her mistress's door, and stayed there an hour: that

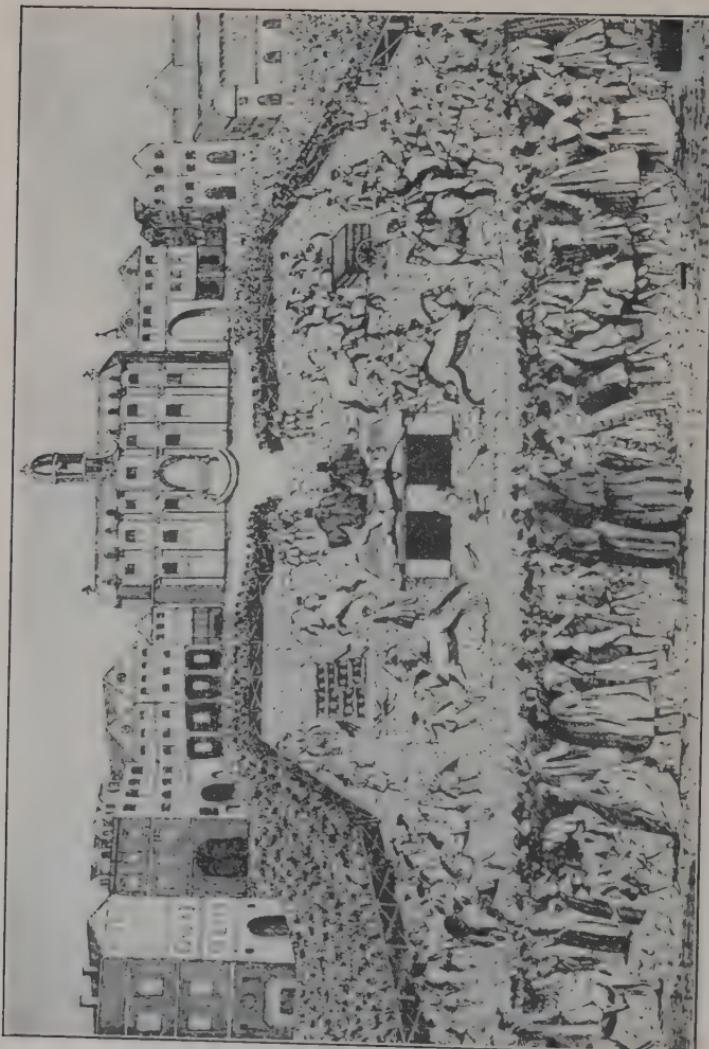
\* Mountford was a popular actor.

Mrs. Brown seeing Mr. Mountford coming, went to him, and desired him not to come down that street, but go to his own house, because of my Lord and Capt. Hill: but he pressed forward and when he met my Lord, there passed several compliments and endearing speeches between them: after which, Mr. Mountford told my Lord, it was a dishonor to him, to keep company with Mr. Hill: and that while the deponent turned about, to look to the door, she heard Mrs. Brown say, Hill and Mountford were going to fight: and that the deponent saw them make two or three passes at one another; after which Mountford said he was killed, and threw down his sword; and she took it up, and there was a good piece of sword broken off: that Mr. Hill ran away, and Mr. Mountford went to his own house; but my Lord Mohun stayed in the same place, where he and Mr. Mountford embraced one another: and that the fight was in the middle of the street: that when the watch came, my Lord Mohun went towards them, and surrendered himself.

*Edward Warrington* deposed, that he lived at the Swan, over against Mrs. Bracegirdle's lodgings; and about ten at night, hearing a disturbance, he looked out, and saw two gentlemen talking to old Mrs. Bracegirdle: that she and some other people went into the house, but the two gentlemen walked about the street for an hour and a half, one of them having his sword drawn: that he saw Mr. Mountford come down Norfolk-street and turn into Howard-street, with his sword in his hand in the scabbard: that Mr. Mountford came out of the way to his own house when he turned into Howard-street; for his house was lower down in Norfolk-street: that my Lord Mohun met Mr. Mountford and embraced him, and complimented him: that he saw Hill and Mountford with their swords drawn upon the paved stones; but some women being about them he could not well discern when they drew, or who begun the quarrel: that he saw Hill and Mountford come off the flat stones with their swords drawn, not a sword's length asunder; and they passed at each other: that the deponent run for a paring-shovel to



THE MURDER OF THOMAS THYNN



DRAWING AND QUARTERING DAMIENS

part them, but before he returned they were gone, and only my Lord Mohun left.

**LORD HIGH STEWARD.**—Can you say whether Mountford's sword was drawn before he was hurt?

**WARRINGTON.**—I cannot be positive whether it was or no, there being women about them.

**ATT. GEN.**—I desire Mrs. Bracegirdle may be asked what became of her maid, who was evidence for my Lord?

**MRS. BRACEGIRDLE.**—She went away from me on the Sunday, and I sent to her aunt's the week after to seek for her, and she could not be found; nor could I hear of her from that time to this.

**LORD MOHUN.**—Was she not discharged, and her wages paid her?

**MRS. BRACEGIRDLE.**—I desired her to stay, but she would not; and demanding her wages, they were paid her.

**LORD MOHUN.**—I desire the maid may be asked why she went away.

**MAID.**—When I came from Hick's-hall, I heard they designed to rattle me off; and Mrs. Mountford sending for me, I was afraid, because they were all players, who have a worse reputation than other people; and I went away: and finding I had taken one of my mistress's aprons by mistake, I desired my uncle, who was a porter, to carry it to her, and he told me there had been three bailiffs to enquire after me; and knowing their inveteracy against me, and fearing to be laid in a prison, I kept out of the way ever since.

Then the Lord High Steward demanding of my Lord Mohun if he had anything more to say, his Lordship answered, he thought he had made his innocence sufficiently appear, and committed himself to that honorable House; where he knew he should have all the justice in the world: after which Mr. Solicitor summed up the evidence for the King.

On Friday, about four in the afternoon (the debates continuing until then), the Lords came from their house above to the Court in Westminster-hall, where the Judges had waited for them a great part of the day; and my Lord Mohun being set to the bar, the Lord High Steward acquainted him, that some questions having arisen upon the evidence in point of law, he was, therefore, by their Lordships' command, to propose a case they had stated to the Judges, for their opinions, *viz.*—In a case where a man shall murder another, whether all those that are in his company at the time of the murder, are so necessarily involved in the said crime, that they may not be separated from the crime of the said person, so as in some cases to be found guilty of manslaughter?

Whereupon my Lord Chief Justice Holt answered, he was of opinion, that the crime of those who are in the company at the time of the murder committed, may be so separated from the crime of the person that committeth the murder; as in some cases they are only to be found guilty of manslaughter; and with him the Lord Chief Justice Treby, and the rest of the judges, agreed: after which, the Earl of Monmouth proposed the following case, *viz.*—A. conscious of an animosity between B. and C.; A. accompanies B. where C. happens to come, and B. kills him: whether A. without any malice to C., or any actual hand in his death, be guilty of murder?

The case being handed to the judges and the prisoner's counsel, Sir Thomas Powis spoke to it; as did Mr. Hawles and Mr. Price; but, offering nothing further than what is advanced in their former argument.

The King's counsel refusing to reply, the opinion of the judges was demanded on the second question.

My Lord Chief Justice Holt answered, that he conceived A. was not guilty of murder; for it appeared the meeting was casual, and there was no design in A. against C.: and, therefore, though A. did know of the malice between B. and C. yet it was not unlawful for A. to keep company with B., but he might go with him anywhere, if it was not upon a design against C.: and, therefore, as the case was put, there was not any offense in A.

With my Lord Chief Justice Holt the rest of the judges agreed.

Then the Lord Scarborough proposed another case, *viz.*—Whether, if A. heard B. threaten to kill C., and some days after A. shall be with B. upon some other design, where C. shall pass by, or come in the place where A. and B. are; and C. shall be killed by B.; A. standing by, without contributing to the fact, his sword not then being drawn; or any malice ever appear on A.'s part against C., whether A. will be guilty of the murder of C.?

The opinion of the judges being demanded to the third question, my Lord Chief Justice Holt answered, he was of opinion, that A. in this case would not be guilty of murder or manslaughter; for it did not appear, by the stating of the case, that A. did consent to the design, or in anywise contribute to the fact. The rest of the judges were of the same opinion.

The Earl of Kingston proposed a fourth question, *viz.*—Whether a person knowing of the design of another, to lie in wait to assault a third man, who happens to be killed (when the person who knew of the design is present), be guilty of the same crime with the party who had the design, and killed him; though he had no actual hand in his death?

The prisoner's counsel having spoken to it, my Lord

Chief Justice Holt delivered this opinion, that it was no murder or manslaughter: he that knew of the design of assaulting, only happened to be present when the assault was made and the party killed; and if he did not contribute to his death, he was not guilty of murder: but if he that knew of the design had advised it, or agreed to it, or lay in wait for it, or resolved to meet the third person that was killed, with him that killed him, it would have been murder.

The Earl of Nottingham proposed a fifth question, *viz.*— Whether a person knowing of the design of another to lie in wait to assault a third person, and accompanying him in that design, if it shall happen that the third person be killed at that time, in the presence of him who knew of that design, and accompanied the other in it, be guilty in law of the same crime with the party who had that design, and killed him; though he had no actual hand in his death?

The judge's opinion on the fifth question being demanded, the Lord Chief Justice Holt answered, that by the words—had no actual hand, he supposed was meant that he gave no stroke, or held the person while the other killed him, or used any violence: and he was of opinion, that this was murder in the person that did accompany the other in the design; for he being acquainted with the design, and knowing the intention of the party to commit murder, or do an unlawful act, upon which death might ensue; accompanying him in that design he shows an approbation of it, and gives him greater courage to put it in execution: which is an aiding, abetting, assisting, and comforting; which are the words used in such indictments.

Mr. Justice Gregory said, he understood it that the party accompanied the murder not only to the place, but in the design; and without whose presence, perhaps, the other

would not have ventured upon it; and, therefore, he was of opinion it was murder.

Mr. Baron Powel was of opinion, that it was murder. For where a person is privy to a felonious design, or to a design of committing any personal violence; and goes along with the party, and accompanies him in putting the design in execution, though he may think it will not extend so far as death, but only beating, and has no personal hand, or does otherwise contribute, but by his being with the other person when he executes his design of assaulting; and the party beaten, dies; they are both guilty of murder. The rest of the judges of the same opinion.\*

The Lord Cornwallis proposed a sixth question, *viz.*— If a person be by, named William, when Thomas said he would stab John; upon which William said, he would stand by his friend: and afterwards Thomas does actually murder John, and William is present at the same murder, whether the law will make William equally guilty with Thomas? or, what crime William is guilty of?

The judges' opinion being demanded, they answered, this was rather a case of fact, than law.—For if William was designedly present with the other that committed the murder, then it would be murder in William; and if there were no evidence to prove upon what account he was present, it might be presumed he was present in pursuance of his former agreement; but, if it appeared that he did not meet in pursuance of that agreement, then it might not be murder: that this was all matter of evidence, and rested upon the conscience of those that were to try the prisoner.

The Earl of Mulgrave proposed a 7th question, *viz.*— If A. accompanies B. in an unlawful action, in which C. is

\* This seems to fit Lord Mohun's case exactly.

not concerned, and C. happens to come in the way of B. after the first action is fully over, and happens to be killed by B., without the assistance of A., whether A. is guilty of that man's murder?

The judges agreed, that as this case was stated, A. was not guilty of murder.

*Saturday, Feb. 4.* The Lords came down from their house. After the question had been propounded to the Lords respectively, in their order, the Lord High Steward declared, that fourteen of their Lordships had found my Lord Mohun *Guilty*, and sixty-nine had found him *Not Guilty*. After which, the prisoner was called; and being brought to the bar, the Lord High Steward acquainted him, that their Lordships' judgment was, that his Lordship was *Not Guilty*; and, therefore, he was discharged.\*

\* Lord Mohun was himself killed in a rather similar affair twenty years later, in 1712.

# CHASTITY PRESERVED



## CHASTITY PRESERVED

*The Trial of Arthur Gray, for Burglary and Intended Rape—  
December, 1721*

ARTHUR GRAY was indicted for breaking and entering the dwelling house of George Baillie, esq. in the parish of St. James's, Westminster, with an intent to ravish Grizel, the wife of Alexander Murray, on the first of October, 1721, in the night.

**COUNSEL.**—The prisoner stands indicted for a burglary, in breaking the house of George Baillie, Esq., with an intent to ravish Mrs. Murray. The breaking and entering a mansion-house in the night, with an intent to commit a felony, is burglary, whether the felony is committed or not. I am instructed, that the prisoner (a servant to Lord Benning), on the 14th of October last, about four in the morning, broke open and entered the chamber of Mrs. Murray, went to her bedside, with a sword in one hand, and a pistol in the other, and told her, he had long had a violent passion for her, but there being a vast disparity in their fortunes, he had no hopes of succeeding in his wishes, any other way than by force, and therefore he was fully resolved to obtain his desires, or to kill her. The lady, in great surprise, endeavored to dissuade him from his purpose, but all in vain. He laid down his sword, in order to remove the bed-clothes, but she prevented him by suddenly catching hold of his pistol with one hand, and ringing the bell with the other, which alarming the family, the prisoner ran away, but was afterwards taken, and confessed his guilt.

**MRS. MURRAY.**—On the 14th of October, about four in the morning, the prisoner entered my room, with a pistol in one hand,

and a drawn sword in the other. And coming up to my bedside, he threatened to kill me if I made the least noise. I asked him, what he meant by coming into my chamber in such a manner? "Madam," says he, "I mean to ravish you, for I have entertained a violent love for you a long time, but as there is so great a difference betwixt your fortune and mine, I despair of enjoying my wishes by any means but force." I tried what I could do to put him off, but still persisting in his design, he laid the sword upon the bolster, and endeavored to pull down the bed-clothes. I begged him to delay till I had spoken with him farther. I used all the entreaties I could think of, and asked him if nothing would prevail with him to desist. "No," said he, "I have ventured my life for your sake already, and therefore am resolutely bent to go through with my design, let the consequence be what it will. All the rest of the family are asleep, and if I lose this opportunity, I can never expect another. Your making a noise will signify nothing. I must and will—." And with that he once more attempted to take off the bed-clothes: but I suddenly pushed him against the wall, wrenched the pistol out of his hand, and rung the bell, and thereupon he ran out. I followed him to the door, and cried murder.

COURT.—How long was he in your chamber, madam?

MRS. MURRAY.—About three-quarters of an hour, for upon my calling out, my father and mother immediately came up, and then it wanted a quarter to five.

PRISONER.—Pray, madam, did —— never come into your chamber when all the family were abed?

MRS. MURRAY.—No, never.

COURT.—If you have any question to ask, you ought to direct it to the Court, and the Court, if the question is proper, will require answer from the witness. Your present question is not at all proper, nor do I see of what service it can be to you. The lady has given you a positive answer, but it was more than she needed to have done.

PRISONER.—My Lord, I shall ask nothing but what I think may

do me some service, when I come to make my defense. I beg your Lordship would ask Mrs. Murray, if her chamber-door was constantly locked at night?

COURT.—You hear the question, madam.

MRS. MURRAY.—It was always shut, but not always locked.

PRISONER.—Did you never rise out of bed to lock it, when —— has been in the room?

COURT.—You must not go on thus.

MRS. MURRAY.—I have told you already that —— never was in the room.

ELIZABETH TRIMNEL.—I attended Mrs. Murray to-bed, about one in the morning, and shut the door after me. But, going by about three, I found it open: I shut it again, and left it shut, and believe it was fast.

PRISONER.—What kind of lock was it?

E. T.—A brass spring lock.

PRISONER.—Was there a key in it?

E. T.—No; it opened and shut with a brass knob.

PRISONER.—But don't you know that the lock was faulty, was difficult to be made fast, and would slip back and open of itself?

E. T.—The spring indeed was bad.

PRISONER.—And might not that be the occasion of the door's being open, when you came to it the second time?

E. T.—I cannot say but it might. But I am pretty sure that I locked it fast at the second time.

PRISONER.—I suppose you thought you had made it as fast the first time.

E. T.—I cannot be so certain of that.

PRISONER.—Don't you know that —— has taken leave of the ladies, and waited in a dark room, till the rest of the company were a bed, and then gone into —— chamber, and staid there two or three hours?

COUNSEL.—You will do yourself no service by this behavior.

You have been told, that you ought to propose your questions to the Court.

*James Parks sworn.*

JAMES PARKS.—I heard a noise about five o'clock in the morning, and thought there had been thieves in the house, and so I jumped out of bed, and ran downstairs in my shirt; but, finding nobody below, I went up again, and met Lady Grizel Baillie, and Mrs. Murray, at the stairs-head, and Mrs. Murray said, "The rogue is just gone out of the room, and run downstairs," and Lady Baillie told me, that Arthur had endeavored to ravish her daughter Mrs. Murray: I went afterwards to look for the prisoner, and so I met Mr. Hays: he showed me a key, and asked me if I knew it. I said, yes; and then said Hays, "If you will come along with me, I will bring you to the owner of it." I followed him into a room in his house, and upon his bed, I found the prisoner lying without his hat and shoes. Thomas Hughes came in soon after me. I asked the prisoner, if he went into Mrs. Murray's chamber with an intent to lie with her? He said, "Yes." "And what possessed you to do it," said I. "Why," said he again, "I believe the devil possessed me." "What! was you drunk?" said I, "No," said he, "I cannot say that I was."

THOMAS HUGHES.—I got up at hearing the noise, and took a blunderbuss in my hand, as thinking some rogues were got into the house; but I was soon informed, that the prisoner had made the disturbance, by going into Mrs. Murray's room with a sword and pistol. I went in search of him, and between eight and nine in the morning, I found him upon Mr. Hays' bed, with neither shoes nor hat. I heard him own, that he went into Mrs. Murray's room, and that he was sorry for it; but I do not remember that he said he went in with an intent to ravish her, or that I heard Parks ask him on what account he went in.

The prisoner's confession before Justice Blagney was then read, in which he acknowledged that, He opened and entered the chamber of Mrs. Murray, with a design to ravish her, and that he brought

the sword and pistol to put her in fear, and oblige her to comply. And several of his letters were produced in Court, in one of which, directed to the honorable and most Christian Lady Bennynge, in Great Marlborough-street, he says: "I must acknowledge my fault, and pray forgiveness of God, and the lady of the family whom I have offended."

### *The Prisoner's Defense*

PRIISONER.—I had been making merry abroad with some of my fellow-servants, and came home much disordered with liquor, and, going upstairs to bed without my shoes (as I usually did), I thought I heard a noise of somebody in Mrs. Murray's room, upon which I went down and fetched up a sword and pistol, and Mrs. Murray's door standing a-jar, I went in, and laying down my arms to look behind the bed, Mrs. Murray rung the bell and alarmed the family.

My Lord, by what has been sworn both by this witness and Elizabeth Trimnel, I think there is a probability that the door was open, at least there appears no proof of the contrary, and if it was open, I cannot be guilty of breaking into the room; my life depends upon this one circumstance, and therefore I humbly hope your Lordship and the Jury will take it into consideration.

All the witnesses for the prisoner gave him the character of a youth of a civil and modest behavior.

The jury, after about an hour's consideration, brought in their verdict *Guilty* of the indictment.—*Death*.

Great interest was exerted in his behalf, and he was afterwards reprieved, and many ballads and poems were written on the occasion, among which, one called

*Virtue in Danger: or, a Lamentable Story how a virtuous Lady had like to have been ravished by her Sister's footman.*

*To the Tune of The Children in the Wood.*

by

LADY MARY WORTLEY MONTAGU.

Now ponder well, ye ladies fair,  
These words that I shall write;  
I'll tell a tale shall make you stare,  
Of a poor lady's fright.

She laid her down all in her bed,  
And soon began to snore,  
It never came into her head  
To lock her chamber door.

A footman of her sister dear,  
A sturdy Scot was he,  
Without a sense of Godly fear,  
Bethought him wickedly.

Thought he, this lady lies alone,  
I like her comely face,  
It would most gallantly be done,  
Her body to embrace.

In order to this bold attempt,  
He ran upstairs apace;  
While she, poor lady, nothing dreamt,  
Or, dreamt it was *his Grace*.

The candle flaming in her eyes,  
Made her full soon awake;  
He scorned to do it by surprise,  
Or her a-sleeping take.

A sword he had, and hard by it,  
A thing appeared withal,  
Which we for very modesty,  
A pistol chuse to call.

This pistol in one hand he took,  
And thus began to woo her;  
Oh! how this tender creature shook,  
When he presented to her.

Lady, quoth he, I must obtain,  
For I have lov'd thee long;  
Would you know how my heart you gain'd  
You had it for a song.

Resolve to quench my present flame,  
Or you shall murder'd be;  
It was those pretty eyes, fair dame,  
That first have murder'd me.

The lady look'd with fear around,  
As in her bed she lay;  
And tho' half dying in a swoon,  
Thus to herself did say:

Who rashly judge, (it is a rule)  
Do often judge amiss;  
I thought this fellow was a fool,  
But there's some sense in this.

She then recover'd heart of grace,  
And did to him reply,  
Sure, Arthur, you've forgot your place,  
Or know not that 'tis I.

Do you consider who it is,  
That you thus rudely treat?  
'Tis not for scoundrel scrubs to wish  
To taste their master's meat.

Oh! Arthur, cover me (she said)  
Or sure I shall get cold;  
Which presently the rogue obey'd,  
He could not hear her scold.

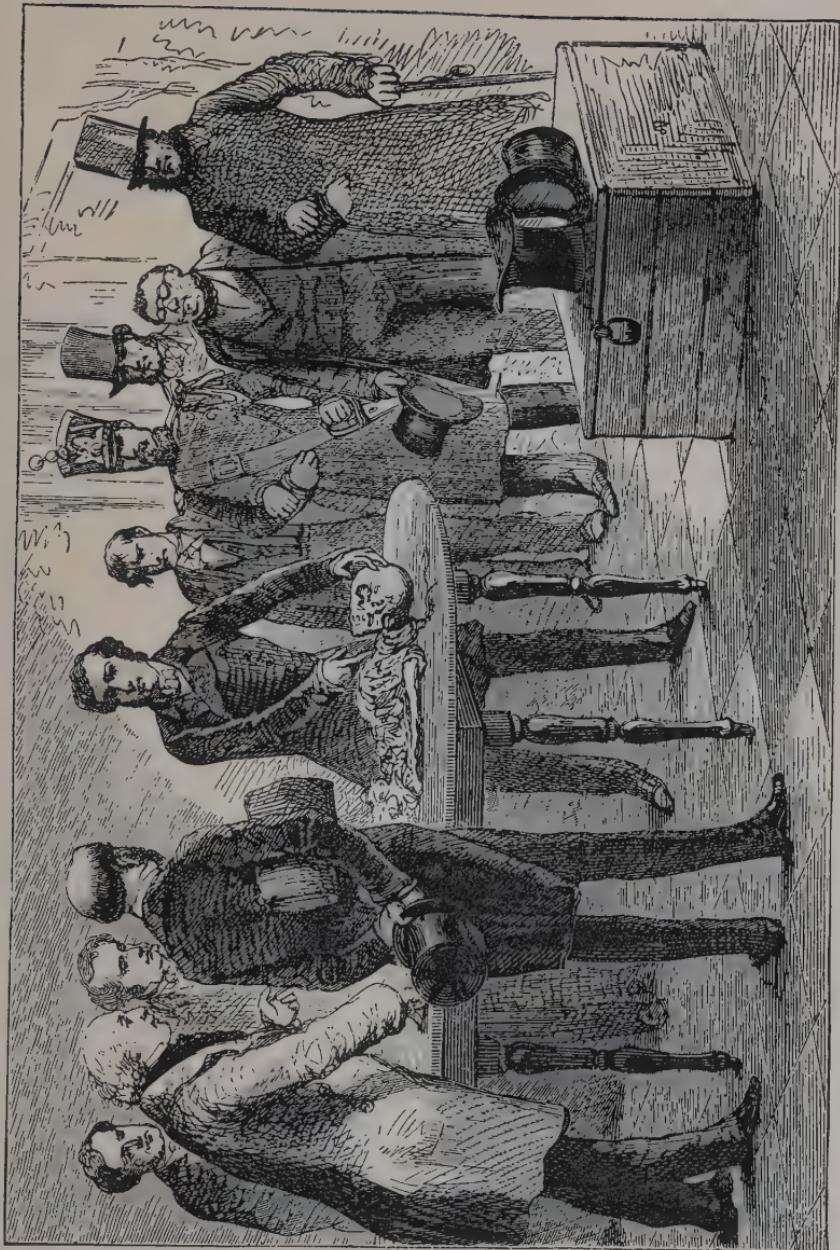
He laid his sword close by her side,  
Her heart went pit-a-pat;  
You've but one weapon left, (she cry'd)  
Sure I can deal with that.

She saw the looby frightened stand,  
Out of the bed jump'd she,  
Catch'd hold of his so furious hand,  
A sight it was to see!

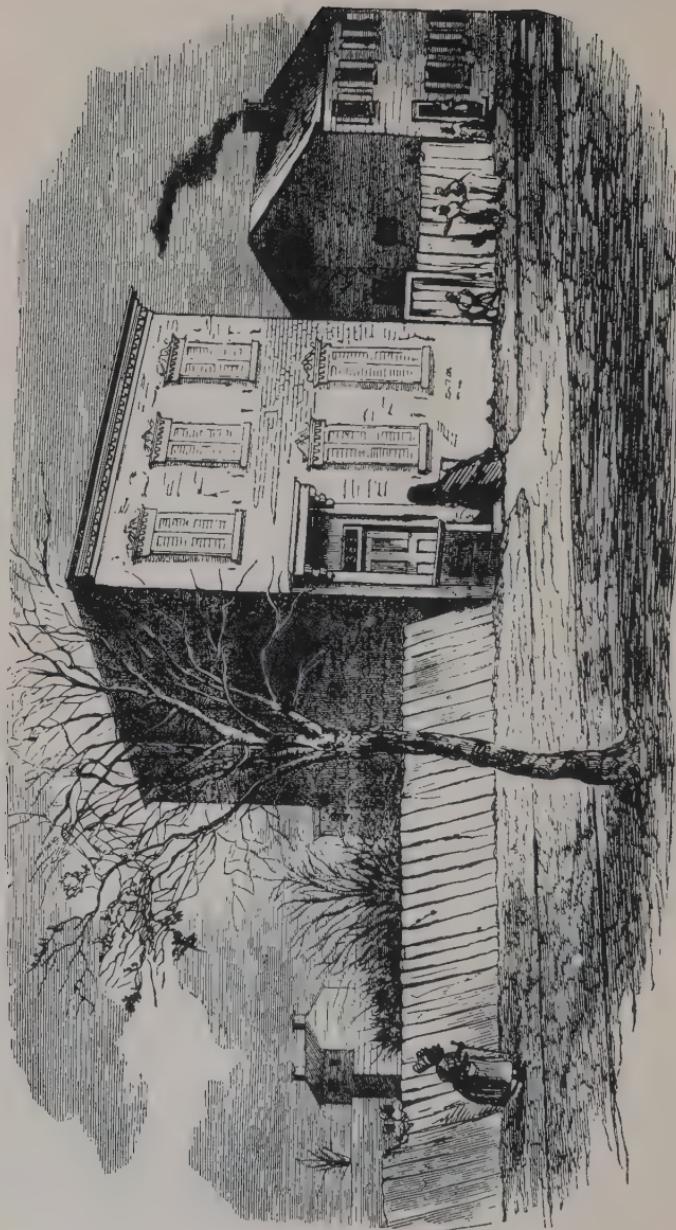
His pistol hand she held fast clos'd,  
As she remembers well;  
But how the other was dispos'd  
There's none alive can tell.

The sword full to his heart she laid,  
But yet did not him slay,  
For when he saw the shining blade,  
God wot, he ran away.

When she was sure the knave was gone,  
Out of her father's hall,  
This virtuous lady straight began  
Most grievously to bawl.



THE SKELETON OF THE MURDERED MADAME HOUET



THE MYSTERIOUS HOUSE ON FIFTEENTH STREET, HIRED BY KEY  
AS A MEETING PLACE FOR HIMSELF AND MRS. SICKLES

In came Papa and Mama dear,  
Who wonder'd to behold;  
Oot Grisee, what a noise is here,  
Why stand you in the cold?

Mama, she said (and then she wept),  
I have a battle won;  
But if that I had soundly slept  
My honor had been gone.

A footman of my sister, he—  
A footman! cry'd Mama,  
Dear daughter this must never be,  
And we not go to law.

This lady's fame shall ever last,  
And live in British song,  
For she was like Lucretia, chaste,  
And eke was much more strong.



# THE FORTUNES OF A FOOL



## THE FORTUNES OF A FOOL

*The Trial of Robert Francis Damiens, for Stabbing Louis XV,  
King of France, 1757.*

DAMIENS was the son of a poor laboring man of Tieuloy, a hamlet in the earldom of Artois. He lived in various menial situations previous to the year 1756, when he was taken into the service of Mr. Mitchel, a Russian merchant, then at Paris. Damiens had not been in this situation more than two days before he decamped with two hundred and fifty Louis d'ors (6,000 livres, or 2,621. 10s.), and made his escape from Paris.

On Wednesday, the 5th of January, he desired Mrs. Fortier, the landlady of the Inn at which he lodged, about eleven o'clock in the forenoon, to send for a surgeon to bleed him: but the weather being then very cold, Mrs. Fortier imagined he was in jest, and answered him accordingly. However, Damiens, when confronted with her at his trial, insisted, that had he been bled, as he desired, he should not have committed the crime.

About two o'clock in the afternoon he went out of the inn: and from four o'clock was observed to saunter about the courts of the palace of Versailles. One of the guards declared, that being on duty under the archway that leads to the apartments of the princesses, he saw Damiens accosted by a thin man, about five feet high, and about five-and-thirty or forty years of age; who said to Damiens, as he came up to him, "Well!" to which Damiens answered,

“Well! I am waiting.” Damiens pretended that this guardsman inverted the order of the dialogue; that it was himself who said “Well,” and that the other answered, “Well, I am waiting.” Damiens, being urged to declare who was the person, pretended that it was one who was applying for liberty to make a public show of a machine.

The king had, that afternoon, come from Trianon to Versailles to see the princesses; and desiring to return thither, left their apartment about three-quarters of an hour after five, accompanied by the Dauphin and the whole court. Just as his majesty was stepping into his coach, leaning on the count of Brionne, the grand equerry, and the marquis of Beringhen, first equerry, Damiens, who had concealed himself in a little hollow at the bottom of the stairs near the archway, rushed in among the courtiers, and in running towards the king, jostled the Dauphin, and the duke of Ayen, captain of the gardes-du-corps upon duty; then laying hold of his majesty by one shoulder with one hand, with the other he stabbed him in the right side, directly at the fifth rib, with that blade of his knife which was of the penknife fashion. Upon receiving the wound the king said, “I have had a furious stroke given me”; but putting his hand under his clothes, and taking it out all bloody, he said that he was wounded. Damiens, although he had wiped and shut the knife, never thought of pulling off his hat after he gave the blow: the king turning instantly about after he was wounded, and observing him with his hat upon his head, said, There is the man who struck me, let him be seized, and no harm done to him; and then retired to his apartment.

It is possible that Damiens might have escaped undiscovered if he had either taken off his hat immediately after

the stroke, or when he was ordered, as he was pressing through the courtiers to get at his majesty; which he refused, saying, “It is my way!” One of the king’s footmen immediately secured him and committed him to the care of the guards, who conducted him to their hall, where he was searched and stripped. There was nothing found about him worth mentioning, but a knife with two blades, the one pretty large and pointed, the other (with which he attempted the assassination) shaped like a penknife; about seven and thirty louis d’ors, and some silver coin, and a book intitled, “Christian Prayers and Instructions,” which, he said, he received from his brother, Anthony Joseph, at St. Omer’s.

When some interrogatories were put to him, immediately after he was in the custody of the guards, he said, more than once: “Let them take care of my lord the Dauphin: do not let my lord the Dauphin go out for the rest of the day.” These words giving just room to suspect his having accomplices, and that the bloody design was not solely against the king, he was urged to discover them; but Damiens evasively answered, they were a great way off by this time, and out of reach; but that if he impeached them, all would be over. He likewise declared, that if four or five bishops’ heads had been struck off, this would not have happened.

Damiens’ speeches being mysterious, and yet implying his having confederates, some persons, out of zeal, and in detestation of the villainous deed, endeavored to make him discover his accomplices by putting him to torture. Accordingly they placed him near a great fire in the guard room; and applied redhot tongs to his legs: but it was all in vain, for Damiens, instead of making any discovery, upbraided the lord-keeper to his face, with being in a great measure the author of the public troubles, and a betrayer

of the rights of parliament. Damiens giving no manner of satisfaction, the torture was continued but a short time; especially as it might produce such effects upon his body as would render him unable to undergo a more solemn trial; where it was hoped he would be induced to make an ingenuous confession, and impeach his associates, or be convicted on clear evidence.

The king having thought proper to have Damiens tried by the Parliament of Paris, instead of the Provostship of Versailles (whose proceedings in the cause carried on before them, his majesty ratified), the criminal was removed from the jail of Versailles, where he had made some attempts to kill himself, in the evening of the 17th of January, the coach he was in being well guarded, and the road secured by numerous patrols. He arrived, about two o'clock in the morning of Tuesday the 18th of January, 1757, at the Conciergerie, in Paris; from the gate of which sentinels were placed within, in a line to the courtyard of the tower of Montgomery, at the bottom of which was a guard of twelve soldiers, to relieve the sentinels within.

By some queries put to Damiens it would appear that his judges had an oblique suspicion of some person in England being privy to his sanguinary design. But whether their suspicion arose from circumstances relating to an affair that happened about ten years before that in Sweden, or from whatever cause, the questions were:

Whether he had ever made a voyage to England, and if his design was not to return thither from Dunkirk, the last time he was there?

Damiens answered, he never was in England. But if he had he would have found few of his principals.

Whether, in the different services he had passed through, he had not served foreigners, especially the English?

Damiens answered, he had not.

His answer with respect to not serving any foreigner is absolutely false; for Dubas, the Swiss officer, though in the French army; and Mitchel, the Russian merchant, were as much foreigners in France as any Englishman.

On Saturday, the 26th of March, Damiens was solemnly examined for the last time by his judges; before whom he appeared with as much assurance as if he had been innocent of the heinous crime with which he was charged.

Of other questions the following were amongst the last put to him; which will give a sufficient specimen of his obduracy and want of sincerity.

Q.—Who made him believe that it was meritorious to kill the king?

A.—His intention was not to kill him: and has nothing further to answer on that head.

Q.—How could he imagine that he could stab the king in such a manner as only to wound and not kill him?

A.—If he had plunged the knife three-quarters of an inch higher he had killed him.

Q.—What precaution had he taken to stab the king in the very part that he did?

A.—If he had formed a design to kill the king, no person could have hindered his giving him several stabs.

It was represented to him that the last answer was falsified by what he had said upon former interrogatories, when he owned that the whole horror of the crime had presented itself to his mind the very instant of his committing it, his legs having failed him, and he scarce knew where he was.

A.—Since he had time to shut his knife, and put it up in his pocket, he must probably know where he was.

It was remonstrated to him that this answer evidently proved the

confusion he was in at that time; and that he would have taken off his hat, and availed himself of the time he had to escape, if his mind had been free.

A.—He has nothing more to say on that head.

It was represented to him that his confusion and obstinacy, in not declaring from what principles he judged his action meritorious, is proof that he is bound by some terrible oath not to reveal the poisoned spring from which he drew such a principle.

A.—He had nothing to answer on that point.

Q.—How came he to believe that his crime would make the national disturbance cease?

A.—He had no intention to kill the king, but to let him know the enemies he had in his court.

Q.—How could he thereby have let the king know his enemies?

A.—The king had never listened to any of the remonstrances that had been made to him.

Upon this, Damiens being withdrawn, the attorney-general having summed up the evidence, demanded that Damiens should suffer the same kind of death as Francis Ravaillac had suffered for the murder of king Henry IV, having previously undergone the torture, and performed the *amende honorable* before the church of Nôtre Dame: that the house in which he was born should be razed to the ground (the owner thereof being first indemnified) and that no other building should ever be on that spot; that his father, wife, and daughter, should quit the kingdom, and never return, under the pain of death; and that his brothers and sisters should change their names. The proof being clear, the judges agreed to the attorney-general's demand. In the hopes of conquering Damiens's resolution, and obtaining a full discovery, they ordained that he should be tortured in the Brodquin, as being (according to the opinion

of the physicians and surgeons) thought the most acute of all tortures, and the least liable of depriving the criminal of sensation or life.\*

Damiens, at seven o'clock in the morning of Monday, the 28th of March, 1757, was carried up, in his hammock, to the torture room; at which time the French guards yielded up their charge of the prisoner, according to custom on such an occasion, to the lieutenant of the short-robe; whose office resembles that of Sheriff in England at executions.

Then the recorder read the sentence of the court, which Damiens heard without showing any emotion; and, on raising himself, said, This day will be a sharp one.

A little before eight o'clock the criminal was placed on the stool of examination; and for near an hour and a half was questioned by six commissioners of the parliament, concerning his accomplices, and earnestly exhorted to redeem himself from the torture, by declaring the truth and making a full discovery; but he still persisted inflexible and would give no satisfaction.

The executioners then set about their duty, and put the criminal's legs into the Brodquin; and having tightened the ropes with extraordinary rigor, Damiens shrieked most hideously, and pretended to faint away; but the physician and surgeon (of whom some always attend at the torture) who were present on examination, found that the swoon was feigned. Damiens then asked for some drink, they gave him water, but he begged to have some wine amongst it; saying, Now or never strength is necessary.

That the numbness, occasioned by the violent compression of the cords, might wear off and he fully recover his sense

\* The Brodquin was the Boot in which the legs were crushed, flesh and bone, by wedges being driven in. Damiens seems to have been a very different type from poor, mad Ravaillac.

of feeling, half an hour elapsed before the first wedge was applied, at the driving of which he cried most dreadfully. During the operation the first president questioned him about his accomplices: and having asked who incited him, Damiens cried out, It is Guatier. Being interrogated, he told who Guatier was, and also his abode; and accused him of having used very criminal expressions before Mr. le Maitre de Ferrieres, whose affairs Guatier managed, and lodged at his house. Their expectations of the long wished for discovery seemed now to be on the point of being fully gratified.

The commissioners then ordered the lieutenant of the short-robe to bring the gentleman immediately before them in that room.

In the meantime the torture continued, with the intermission of a quarter of an hour before the application of a fresh wedge, every one of which made Damiens renew his shrieks; the most pressing questions and earnest exhortations all the while being put to him to discover the whole. On the eighth and last wedge being driven Damiens cried out, "Why had I so weak a head, the king being so mild and good a prince?" When he had been two hours and a half under the torture, the physician and surgeon declaring that he could not longer bear it without danger of his life; he was untied and laid upon a mattress, where he persisted in what he had said against Guatier and Mr. le Maitre de Ferrieres.

These two gentlemen came in a short time, separately, after Damiens was freed from the Brodquin.

Guatier came first with the countenance of an innocent man unjustly accused; and when he heard the accusation made against him by Damiens, he was quite astonished. He

denied the whole, and Damiens as positively maintained it; upon which the commissioners sent Guatier to prison.

When Mr. le Maitre de Ferrieres appeared and heard Damiens' charge against him, he was quite shocked at it, but behaved with decorum and modesty. When confronted with Damiens he denied his having been present at the words alleged to have been spoken by Guatier; and Damiens not being very positive Mr. le Maitre de Ferrieres was dismissed.

Damiens having asked liberty to see the curate of St. Paul's again, he was sent for; and on his arrival the commissioners withdrew. He stayed with Damiens in the torture room nearly an hour, after which the criminal was carried down to the chapel; where Mr. Guerer left him to the care of Mr. de Marcilly, another doctor of the Sorbonne, a man of experienced zeal on such occasions. After the curate of St. Paul's had been gone about an hour he returned to the Conciergerie, where those two divines used their utmost endeavors, in their capacity of clergymen, to make Damiens sensible of the heinousness of his crime, and the dismal state in the next world of those who die obstinately in their guilt; especially of such an heinous nature as his was; for which his sufferings would be but a small atonement, as the royal family and kingdom could not be said to be safe whilst the associates in his horrid attempt were undiscovered.

When Damiens's treason was found incontestably evident, orders had been given to enclose a space at the Greve for the place of his execution, of about a hundred yards square, with palisades; having only one entry at one of the corners, for the admission of the criminal and his escort, and for an opening to the passage to the Town Hall. In the

middle of this inclosed area there was a scaffold erected, raised about three feet and a half above the ground, of nearly nine feet in length, and as many in breadth.

A little before three o'clock the commissioners went from the Conciergerie to the Town Hall, preceded, according to custom, by the archers, or halberdiers.

Damiens, at the same time, was brought in a tumbril, or dung cart, before the principal gate of the church of Nôtre Dame, in his shirt, where, according to his sentence, he performed the ceremony of the *amende honorable*, by holding a lighted torch of two pounds' weight, acknowledging his crime, and begging pardon of God, the king, and the laws; which he seemed to do with an air of sorrow and contrition.

He was then carried in the same vehicle to the Greve, which was surrounded by the soldiers of the foot watch, and on the inside was guided by the corps under the command of the lieutenant of the short-robe. To prevent any commotion or disturbance, the horse patrol was stationed in the square of Veaux; detachments of the French guards, at proper distances, lined all the avenues and streets leading to the Greve, and all the way from the hall of justice to the church of Nôtre Dame; and gardes-du-corps were posted at all the quarters, and at the ends of all the principal streets in Paris.

When Damiens arrived at the Greve he expressed a great desire to speak with the commissioners of the parliament; which being communicated to them, they ordered him to be brought up to them in the Town Hall. When he was carried before the commissaries, or commissioners, he asked pardon for the calumnious expressions which he had used since his confinement, against the archbishop of Paris, acknowledging them to be false and groundless. He declared

that his wife and daughter were entirely innocent, and no way accessory to his crime; most earnestly intreated that they might be used with mercy and compassion; and asserted that he had neither inciter, accomplice, nor associate in what he had done.

The commissioners finding that all their endeavors were ineffectual, and that the criminal persisted in his inflexibility, commanded him to be carried back to the Greve; which was accordingly done. But the executioner not having everything prepared to proceed to immediate execution, Damiens waited some considerable time before the preparations were completed, during which time the two divines (who attended him to his last moments) were incessant with him in their duties. The hangman, for this neglect, was afterwards imprisoned, for some days, in the dungeon.

A little before five o'clock, Damiens was stripped, and even then gave proof of his firmness by surveying all his body and limbs very minutely with great attention, and by looking undauntedly round on the vast concourse of people who were inveighing against him most vehemently. He was then laid on the scaffold, to which he was instantly tied, and soon afterwards fastened by two iron gyves, or fetters, one placed over his breast below his arms, and the other over his belly, just above his thighs. Then the executioner burnt his right hand (with which the villainous stab had been given) in flames of brimstone; during which operation Damiens gave a very loud and continuous cry, which was heard at a great distance from the place of execution, and made many, who could not see the tragedy, judge what part of it was performing; after which, Damiens, raising his head as well as he could, looked for some time at the burnt hand with great earnestness and composure. The executioner then

proceeded to pinch him in the arms, thighs, and breast, with red-hot pincers; and Damiens at every pinch shrieked in the same manner as he had done when his hand was scorched with the brimstone; and viewed and gazed at every one of the wounds, and ceased crying as soon as the executioner discontinued the pinching. Then boiling oil, melted wax and rosin, and melted lead, were poured into all the wounds except those on his breast: which, at their respective and various applications, made him give as loud shrieks and cries as he had done before when his hand was burnt with sulphur, and his breast, arms, and thighs, torn with hot pincers. The words which he exclaimed and roared out at every repetition of torment, were in substance as follows:—Strengthen me! Lord God! Strengthen me! Lord God, have pity on me! O Lord, my God, what do I not suffer! Lord God, give me patience!

When he had undergone all these excruciating torments, and everything being ready for the execution of the next part of his sentence, the executioner and his assistants proceeded to fasten round the criminal's arms, legs, and thighs, the ropes with which the horses were to tear those limbs from his body. This operation being very long, and the tight tying of the ropes upon the fresh wounds augmenting his pain, made the miserable Damiens renew his shrieks and cries most hideously; but such was his continued firmness, that even then he surveyed his body minutely, and with surprising curiosity; though being sure that he must die in a short time, he did not even express the least sorrow for the crime for which he was suffering these torments.

When the cords were fixed, four stout, young, and vigorous horses were put to the draught, and continued their repeated efforts above an hour without doing anything

further towards the dismembering of the unhappy criminal than stretching his joints to an astonishingly prodigious length; which probably was owing to the youth and vigor of the horses, as being for that reason too headstrong and unmanageable for pulling in concert. The physician and surgeon then acquainted the commissioners of the parliament, that unless the efforts of the horses were seconded by cutting the principal sinews of the sufferer, which indeed might be extended to a very great length without being torn asunder, it would be very difficult, if not almost impossible, to put that part of the sentence in execution. The commissioners upon this representation sent an order to the executioner to make the desired amputation; especially as night was coming on, and that it was, in their opinion, proper that the execution should be accomplished before that day was at an end.

The sinews being cut in consequence of that order from the Town Hall, the horses began to draw anew, and after several pulls a thigh and arm were torn from the body. Damiens looked at his severed members, and had some remains of sense after his other thigh was pulled off; nor did he expire till his other arm was likewise torn away.\*

As soon as there was no appearance of life left, the trunk and dismembered quarters were thrown on a large blazing pile of wood, erected for that purpose near the scaffold, where they continued burning till seven o'clock next morning, and afterwards his ashes were, according to the sentence of the court of parliament, scattered in the air.

On the next day, Tuesday, March 29th, 1757, after several formalities, in consequence of the execution, such

\* Could anything be more hideous and savage than this punishment! Yet regicides continued to flourish.

as dispersing the criminal's ashes in the air, upon the requisition of the attorney-general a sentence was granted, and proclamation made, commanding the father, wife, and daughter of Damiens, to leave the kingdom and dominions of France, and never return thither under pain of being put to death. But the king of France, considering the difficulties to which those unfortunate persons might be exposed in their endeavors to get a livelihood, on account of prejudices conceived against them, granted each of them a yearly pension sufficient for subsistence, during their respective lives. His brothers and sister were, by the same sentence, commanded never to use the surname of Damiens; and by the same decree the house in which Damiens was born was ordered to be pulled down: all which orders were put in execution, and complied with.

# CUPID IN COURT



## CUPID IN COURT

*The Trial of William Henry, Duke of Cumberland, for Adultery with Lady Grosvenor, March, 1770.*

THE duke of Cumberland was the youngest surviving brother of George III, and at the time of this intrigue was in his twenty-fourth year. Lady Grosvenor was about the same age, and had been married about five years to Richard, lord Grosvenor, and in the interim had had two sons, one of whom was subsequently the earl Grosvenor. She was a lady of preëminent beauty, daughter of Henry Vernon, Esq., and his lordship had fallen in love with her at an accidental meeting in Kensington Gardens.

Numerous witnesses were examined, and the first was lady D'Onhoff, who proved the recent meetings of the duke and her ladyship, and determined the following letters, which were adduced in evidence, to be in the handwriting of the duke of Cumberland. His grace's punctuation, spelling and construction are faithfully reproduced.

“My ever dearest Love,

“How sorry I am that I am deprived the pleasure of seeing you this evening but especially as you are in pain God grant it over upon my knees I beg it although it may go for a few days it must return, and then you will be easy, my only joy will be happy; how shall I thank for your very kind note, your tender manner of expressing yourself, calling me your dear friend, and at this time that you should recollect me. I wish I dare lye all the while by your bed, and nurse you—for you will have nobody near you that loved you

as I do; thou dearest angel of my soul! O, that I could but bare your pain for you I should be happy, what grieves me most that they who ought to feel don't know inestimable prize the treasure they have in you—thank God if it should happen now, Mr. Croper is out of town, and you may be quiet for a few days,—I shall go out of town to-night, but shall stay just for an answer, pray, if you can just write me word how you find yourself, I shall be in town by eight to-morrow evening in hopes of hearing again, I am sure my angel is not in greater pain than what my heart feels for my adorable angel—I sent this by D—— servant, she is gone to Ranelagh, do if you write, dierct it to her, the boy has my orders, and will bring it to me—Adieu, God bless you, and I hope before morning your dear little one."

*Directed to "Lady Grovesnor."*

"My dear little Angel,

"I am this instant going out of town, ten thousand thanks for your kind note, I am sure nothing could make my aking heart to-night bearable to me, than when you say you are sensible how much I love you, pray God it may be over before morning, or that you may be better, I shall be in town at eight o'clock, for I shall long to know how you are, don't mention to D. that I wrote by her servant to you, for I have ordered him not to tell—Adieu, good-night, God bless the angel of my soul, joy, and happiness, without whom I have no comfort, and with whom all happiness alive *au revoir* I hope very very soon.

*Directed to "Lady Grovesnor."*

"My dear little Angel,

"I wrote my last letter to you yesterday at eleven o'clock, just when we sailed, I dined at two o'clock, and as for the afternoon I had some music, I have my own servant on board that plays, and a couple of hands from London for the six weeks I am out—We were a good many at dinner, I had about nine people yesterday, and shall have more when the rest of my squadron joins me,

they staid with me till near seven—I got to supper about nine o'clock but I could not eat, and so got to bed about ten—I then prayed for you my dearest love, kissed your *dearest little hair* and laye down and dreamt of you, had you on the dear little couch ten thousand times, in my arms kissing you, and telling you how much I loved and adored you and you seemed pleased, but alas! when I woke I found it all delusion, nobody by me but myself at sea, I rose by time at half past five and went upon deck, there I found my friend Billy, and walked with him for about an hour, till Barrington came to me, we then breakfasted about eight o'clock, and by nine I began and exercised the ships under my command till twelve, it is now one, and when I finish this letter to you my dearest love, I shall dress and go to dinner at two o'clock, it is a rule on board to dine at two, breakfast at eight, and sup at nine—always, if nothing hinders me, I shall be a bed by ten or soon after, and up by half past five in the morning, in order to have, if there is any occasion, orders ready for the fleet under my command before I begin to exercise them—I am sure the account of this day's duty can be no pleasure to you my love, yet it is exactly what I have done, and as I promised you always to let you know my motions and thoughts, I have now performed my promise this day to you, and always will, until the very last letter you shall have from me, which will be when I between five and six weeks hence send the Admiralty word that I am arrived at Spithead, then I shall only wait just for their answer which will be with me in a few hours, to strike my flag, and then I shall return to you that instant. O! my love, mad, and happy beyond myself, to tell you how I love you and have thought of you ever since I have been separated from you, the wind being contrary to-day, about one, I put off dinner till three o'clock, in order to anchor ships for this night, in Portland Road, just off Weymouth, about two miles, I hope to sail to-morrow by five o'clock in the morning, I hope you are well, I am sure I need not tell you I have had nothing in my thoughts but your dear self, and long for the time to come back again to you, I will all

the while take care of myself because you desire my dear little friend, does the angel of my heart, pray do you take care of yourself, for the sake of your faithful servant, who lives but to love you, to adore you, and to bless the moment that has made you generous enough to own it to him. I hope my dear, nay, I will dare to say you never will have reason to repent it, the wind was not so contrary but we could have sailed on, but I told Barrington, that as it was not fair I would anchor, especially as I could send one of my frigates in, for that I had dispatches of consequence to send to London; indeed my dear angel I need not tell you, I know you read the reason too well that made me do so, it was to write to you, for God knows I wrote to no one else, nor shall I to any other but the king. God bless you, most amiable and dearest little creature living—*Aimons toujours mon adorable petite amour je vous adore plus que la vie neme.*”

Directed to “Lady Grovesnor.”

“Portland Road, Saturday, 17th June.

“My ever dearest little Angel,

“The wind to-day is not fair, so I shall lay here in Portland Road till it is, and take this precious moment in sending this other note to you, I hope it will find you well, and that you are not afraid of being gone out of town before I return back to you, thou loveliest dearest soul! I have been reading since my last note of yesterday to you a great deal out of Prior, keeping the heroine, bye till I have read quite through, and find many things in it to correspond with us exactly,

“Hear, solemn Jove; and conscious Venus, hear;  
And thou, bright maid, believe me, whilst I swear,  
No time, no change, no future flame, shall move  
The well-plac'd basis of my lasting love.

“Do not think I wanted this book with me to tell me how well I loved you, you know the very feelings of my heart, yet it is

great pleasure when I am reading to find such passages that coincide so much with my own ideas of dear you, I will write constantly, it is my only entertainment that and hearing from you, will be, except my duty on board, the only thought or employment I shall have or even wish, I have just now had a message from shore, it is about two miles from Weymouth, to go to the rooms this morning, I have excused myself being much quieter on board and happier in writing to you, you are not there, or else the boat that should carry me would go too slow, I long for that happy moment that brings me back again to all I love and to all that I adore—indeed I am sorry my letters are so stupid, pray write to me, you know whether to send them, to send them to D—— or to Mrs. Reda,—I long to hear from you, it is now within two days of a fortnight, indeed it seems forty thousand years, how happy when we meet, that our letters has opened to each other the very feelings of our honest hearts, permit me to name yours with mine, then they will be words and happy looks from two of the most sincere friends alive, your heart is well although fluttered while I write to you, I hope mine is flurried too, they ought to have the same emotions, I know they have, they are above dissembling, I must now conclude, God bless you, I send you ten thousand kisses, pray when you receive this return them to me for I want them sadly.

*“Adieu je vous aime adorable petite creature je vous adore ma chere petite bejoux l'amant de mon coeur——.*

“God bless I will write constantly.”

*Directed to “Lady Grovesnor.”*

Different innkeepers were then examined, who proved that the duke and lady Grosvenor had traveled and slept together as man and wife at their houses, the duke always appearing in disguise, in a dark brown wig drawn over his forehead, with his hat pulled over his face, and in a dark brown great coat. Besides meeting her in many places in London, he followed her to Eaton Hall, near Chester, where he lived

incognito at the public houses in the vicinity, meeting her ladyship in the fields. This part of the evidence is curious.

*Mary Jones*, wife of John Jones, of Marford Hill, in the county of Flint, innholder, aged forty-six years, deposed that she and her husband, John Jones, keep an inn, known by the name of the Toll House, at Marford Hill, in the county of Flint, about six miles and a half from Chester: that she had no knowledge of Lord Grosvenor or Lady Grosvenor; but had seen them both; and that, on Wednesday, to the best of her knowledge, the 1st day of November, 1769, three persons came to her house at Marford Hill, on horseback, with bags, about eleven o'clock in the morning; they all had greatcoats on, and the saddle-bags were quite new, and one of them, whom she afterwards knew to be the Duke of Cumberland, had a lightish drab coat on, and a blue-and-white flannel waistcoat, and a brownish wig, which came low over his ears, and down upon his forehead, with a handkerchief round his neck; another of the said persons went by the name of Farmer Tush; and the third, who attended as their servant, went by the name of John. His Highness was called the young squire, and Farmer Tush passed as his guardian; they refreshed themselves with wine, and bread and butter, and rode out the same morning; they inquired also if they could have good beds? They returned about seven o'clock in the evening, and supped and slept in her house; the next morning, after breakfast, they rode out, ordering dinner to be ready at five o'clock: about three o'clock the said man John returned, and told her, she must hasten dinner as soon as she could, for they talked of going away; and when the Duke of Cumberland, and Farmer Tush, whom she afterwards saw at his Royal Highness's house in Pall Mall, came in, Farmer Tush told her, that they must go off immediately, for they had received a letter that the young squire's father, meaning his Royal Highness, lay a dying, and they feared he would be dead before they could get to him; but he said, that they liked the place vastly, and would come

again in a month's time, or sooner, if possible, when his affairs were settled. They had five hats, one of which was laced, and four different riding coats: and the said persons with his Highness changed hats, sometimes one wearing the laced hat, and sometimes the other: it was reported in the neighborhood, that they were suspected to be highwaymen, and the witness thought so then; they talked about farming but they knew nothing about the matter. The witness had seen the Duke of Cumberland afterwards in London; and, from the features of his face, and a mark that he had on the right side of his face, which she observed when he was at her house, she was certain that the person who came to her house, so disguised, with the other two persons, was his Royal Highness.

The said three persons left two sticks to be taken care of, and the two plain hats were also left by mistake behind them: and on Thursday, the 30th of November following, the person who went by the name of Farmer Tush, and the man called John, came in the evening about dusk, each of them having a led horse in his hand, and both dressed in the same way as when they came before; and they laid all night at her said house: and she inquired of Farmer Tush, where the young squire was, meaning the Duke of Cumberland, and he told her they had left him with another gentleman, a long way off: they said, he might come that night, but they did not know whether he would or not, as they had left him far behind: the next day in the afternoon, Farmer Tush appeared very uneasy that his highness did not come, and every person that came to the house he thought was him. About eight or nine o'clock the next morning, being Saturday, his Royal Highness arrived in a post chaise with a gentleman, and brought some saddle-bags with them, and his Highness was dressed in the same manner as when he was at her house before: after they had breakfasted his Royal Highness and Farmer Tush walked out, and did not return till about five o'clock in the afternoon: on Sunday morning they both went out on horseback, and returned about four o'clock in the afternoon; and his Highness, the person who came with him in the post chaise,

and Farmer Tush, dined together: and while they were at her house, the said two persons called each other Farmer, and his highness the young squire. They always went about duskish, on horseback, each of them having a pair of saddle-bags.

This was borne out by the evidence of the hostler and waiter at the Toll House.

Part of the evidence of Jane Richardson of the same inn, is highly characteristic of his royal highness's intellectual reputation.

About twelve o'clock at night she was in the dining room with Miss Mary Spencer, her master's granddaughter, and they heard a noise like rustling of clothes in the passage, the passage being very narrow; and the witness said, it was Joe, meaning her husband, Joseph Richardson, who, she thought, was coming to look for her: but, before the witness got to the dining-room door, she heard the door of the room open in which his Royal Highness lay, and the witness said, it was nothing but the fool, meaning his Highness, who assumed the character of a fool and behaved like one, the person who was with him telling the witness, that if she saw him in the passages, or any where about (as he was apt to walk in his sleep), not to touch him or go near him, and she was about opening the dining-room door, to take the key to fasten themselves in, when she heard the door of the bed-chamber in which his Highness lay, shut to again; and then, hearing no more of him, she and Mary Spencer went to bed. The next morning the Duke of Cumberland went away before it was light; and she assisted to make the bed in which his Highness lay; and one Mrs. Hall, who helped to make the bed, asked who had lain there? She answered, A fool and his servant; but she knew that the servant did not lie with him; and the witness said, that if the fool came there again, he should not have holland sheets, they were so very much rumpled and tumbled; and looking for the pillow, she found it at the very foot of the

bed, between the sheets, which she supposed was one of the fool's foolish tricks.

The conclusion of these intrigues is described in the following manner by John Stephens, adjutant of the Cheshire militia.

On Thursday, the 21st of December, 1769, he breakfasted with Lord Grosvenor, at his house in Grosvenor Square; and his lordship communicated to him his suspicions that his Royal Highness the Duke of Cumberland would endeavor to meet Lady Grosvenor upon her road to London. His lordship was informed (and, upon inquiry, it proved true) that his highness was gone out of town that morning; and his lordship desired the witness to set out and meet his family, in order to assist his brother in detecting Lady Grosvenor and his Highness, if they should attempt to meet together. Accordingly, he set out about one o'clock in the afternoon for St. Alban's; and finding upon his arrival there, that Lady Grosvenor and her family were not come, he got a post chaise in order to go further. He had then some reason to suppose that her ladyship might not come so far that night; but before he had got out of the town he met Lady Grosvenor and her family; when he returned, and went back to the Bull Inn. As he passed by he beckoned to his brother, who came to him at the Bull Inn; and he acquainted him with the business he was come upon, and the suspicions of Lord Grosvenor. His brother left him, and went back to the White Hart; and afterwards returned, and told him, that, from the inquiry he had made, he was very certain his Highness was there. About a quarter after ten o'clock, he went, with his brother to the White Hart Inn, and he went upstairs; his brother went to listen at the door of Lady Grosvenor's bed-chamber, and came and told him he had heard Lady Grosvenor and the Duke of Cumberland talking; he listened two or three times at the door. The witness desired him to be very cautious of what he did, lest he should be mistaken: but he

said, he was certain it was they, for he knew both their voices well; that he knew very well the breaks of Lady Grosvenor's voice, and that he was sure it was the Duke's voice by his thick way of speaking. Afterwards the witness went and listened at the door himself: but, having then a cold, and not knowing the situation of the house, he could not pretend to say whether the voices came, or not, from the bed-chamber; but he certainly heard a low and indistinct kind of talking. His brother being certain, he determined to proceed to break upon the door, and for that purpose he called my Lord's servants up to assist him, to which they agreed. He followed the servants down to the door; and the servants being first placed in order to break open the door, and the signal being given, they made a push, and attempted to break it open, but did not succeed till the fourth push, and then, by the assistance of a poker, which the witness's brother had in his hand, the door was forced open. The first person he saw was his Royal Highness the Duke of Cumberland, who appeared very much frightened and alarmed, and in great confusion; at the same time his brother went to assist Lady Grosvenor, who had fallen down some steps, in attempting to run out of the room into another. His highness followed Lady Grosvenor into the adjoining room; and the witness followed his Highness, who, as soon as he got into the room, spread forth his hands, and said, "You see, gentlemen, that I am not in the lady's room." To which the witness's brother replied, "Where was you when we broke open the door?" His Highness said, he would take his Bible oath that he was not in the lady's bed-chamber.

Depositions in recrimination were adduced, in which it appeared, that lord Grosvenor himself lived a very dissolute life, and passed much of his time with abandoned women.

The investigation, however, terminated in the separation of lord and lady Grosvenor, and in an action brought against the duke, lord Grosvenor recovered £10,000 damages.

# A CHARM AGAINST PLEASURE



## A CHARM AGAINST PLEASURE

*Trial of Lauden Gordon and the Rev. L. Gordon, for Forcibly Carrying Away Mrs. Lee, on the 15th January, 1804*

THE grand jury, after sitting several hours, examining sixteen witnesses, returned a true bill against Lockhart and Lauden Gordon.

*Mr. Mills*, counsel for the prosecution, said, he would advert to some particulars of Mrs. Lee's history, which would be necessary to elucidate what follows: she was the natural daughter of Lord le Despencer, and was born in the year 1774. Lord le Despencer died in 1781, leaving Mrs. Lee, a child about seven years of age. He also left a son by the same mother, and shared between them property to the amount of £70,000 Mrs. Lee being left at that tender age, was put under the care of trustees, and became a ward of chancery. Her guardians put her to school with Mrs. Gordon, the mother of the prisoners, who kept a school at Kensington. Here she first became acquainted with the prisoners, when they were at home for the holidays. In 1794, before she was of age, she was induced to go off with Mr. Lee to Scotland, and was married to him at Haddington. This having been done without the consent of the guardians, when they came to London, Mr. Lee was arrested by order of the chancellor, and confined in the King's Bench, till such time as the court of chancery could arrange the disposition of her property. Early in the year 1796, the business came to a settlement, and the chancellor's

court decreed that half her property should be settled upon her, to be disposed of as she pleased by will. This property amounted to the annual sum of £1200. Some disagreeable circumstances arising, which it will not be necessary to mention, she was separated from her husband the latter end of the same year, after they had lived together only a few months. It was fortunate for Mrs. Lee that she was in a situation of life capable of supporting herself; and in consequence of this, she took a house in Bolton Row, Piccadilly, and kept up an establishment of her own. To this place we trace her down to the latter end of the year 1803. From the time she left Kensington till this year, she had not seen or heard of the prisoners. Lauden Gordon had been many years in the West Indies, and did not arrive in London till September last, when he went to lodge with his brother Lockhart, who had lived in Alsop's Buildings, New Road, about three years. It was in the latter end of December that her acquaintance was renewed with Lauden Gordon, by means of Mr. Blackett, an apothecary, who had attended her for some years. She had not seen Lockhart during the whole three years he resided in London. Mrs. Lee was of a very retired disposition, engaged in little pleasure, and received very little company. She was of a studious habit, and spent much of her time in reading and writing; her seclusion from society arose from a natural habit, which many people term a nervous disposition, to which she was inclined. From the end of December, to the 12th of January, Lauden might have called three or four times, but did not see her every time. During this interval several letters passed, in which she desired him to desist from all ideas of anything more than a common friendship. On the 12th of January, Lauden called on Mrs. Lee in the morning, and at

that time she told him to bring his brother Lockhart the next time he came; and Sunday being fixed upon, it was settled they should come on that day. In the course of the evening of the 12th, Lauden Gordon called again, and left a letter written by himself, and also one from his brother Lockhart, in a separate cover. These letters were afterwards read in court; she identified the writing of Lauden, but could not swear to that of Lockhart's, as she had never seen his writing before. In Lauden's letter he declares his passion in very strong terms, and Lockhart engages to support him with all his interest, and even with his own life. Sunday, the 15th of January, the day appointed, being come, they went to dine with her at the time appointed, about five o'clock, and were ushered into the drawing-room. On her examination, it appeared that their conversation before dinner, which was but a short interval, related to the subject of the letter alluded to; in which she took occasion to point out to them the barrier that laid in the way of the accomplishment of their wishes; showed them the imprudence of urging it any further; and begged that the conversation might be diverted from that subject. They then went to dinner, when the conversation was on general subjects. The cloth was withdrawn at six o'clock. At seven, Lockhart pulled out his watch, and said, "It is time the chaise was come: I wonder whether it is arrived?" Upon this Mrs. Lee expressed her surprise, and asked, what chaise? The events that followed will be detailed in evidence of the several witnesses who were called to support the prosecution.

*Elizabeth Westcraft* lived in Alsop's Buildings, and was mistress of the house where Lockhart had lodged for three years. She knew him in the character of a clergyman, but had never

heard him officiate. Since Lauden had lived there, which was about two months, he had been very much in debt, and desired her to deny him to everybody that came on any day except Sunday. She, herself, in conjunction with Lockhart, had once bailed him for £10. She said, that on Sunday the 15th of January, they ordered her to get a post chaise in readiness, and drive to the end of Bolton Street, at seven o'clock precisely. She accordingly sent the chaise at the hour appointed.

*Mary Davidson* was next called. She was servant to Mrs. Lee, and had been in the habit of waiting upon her for seven years. She had lived in the family of Mrs. Lee's father, for twelve years, but at that time was not acquainted with Mrs. Lee. She corroborated the most material facts of the Gordons coming to dine with her mistress on the 15th of January, and their subsequent conduct. She perceived her mistress to be agitated, when she slipt out of the room and said she was afraid they were going to take her away; when the witness replied, "They cannot take you out of your own house." She saw them force her mistress downstairs, and ran to her assistance, when Lockhart presented a pistol to her, and threatened to blow her brains out, if she did not remain quiet. She followed them out into the street, crying, "Murder! thieves! fire! they are taking away my mistress!" when she saw them drive away as quick as possible.

The two post-boys were called next. The first proved his being sent to Bolton Row, where he stopped at the end of the street; that he there took up a lady and two gentlemen, who desired him to drive fast, and threatened to shoot him if he did not make haste. When he arrived at Uxbridge they got into another chaise, and Lockhart Gordon gave him half a guinea. The counsel asking him if he was not uncommonly well paid, he confessed he seldom received so much. On cross-examination, Mr. Abbott asked him, whether any force was used towards the lady, and if he observed anything more than commonly happens when a gentleman and lady get into a chaise? To this he replied, that there was no force

used whatever; that the lady laughed when she got into the chaise; and that he observed nothing out of the common way. The same question was put to the post-boy who drove them from Uxbridge to Tetsworth, and the same answer was returned.

*Mrs. Lee* was then called, and a chair being placed for her, her examination commenced, and lasted for the space of three hours. The principal part of the evidence went to corroborate the facts stated in Mr. Mills's address to the jury. She very strongly denied her acquiescence in being taken away, and said she had frequently advised them to desist; that when they got to Uxbridge, she asked for a post chaise to take her back, but they said it was impossible. She said, that in various parts of the transaction she was so much agitated as not to know what was going forward. When questioned as to the time and circumstances attending the different visits of the Gordons, and the letters that passed, she appeared to have frequently but a very vague recollection on the subject.

*Mrs. Lee* was then cross-examined by Mr. Abbott. She acknowledged that when she was at Kensington, and first became acquainted with the Gordons, that familiarity took place which is common among children. It appeared that when she heard that Lauden Gordon had returned from the West Indies, she sent the first invitation to him through the medium of Mr. Blackett, her apothecary. That when Lauden called on her at any time, she made him fix a time for coming again; which circumstance Mr. Abbott brought to her recollection, by reciting a particular occasion when he sent her a polite note, expressing his sorrow that he could not attend her appointment, being unavoidably engaged somewhere else. Mr. Abbott asked her whether they were not upon terms of familiarity from the time of his first visit; and whether it was not customary, when they parted, for him to give her a salute, either on the lip or on the cheek, after the French fashion? This she admitted, but denied any further familiarity. . . .

Mr. Abbott then asked her, if, when she left her house, she

had not a steel necklace about her neck, to which was suspended a bag with camphor in it? Answer: Yes.

Whether it was not customary with some people to wear such a thing as an amulet, or charm, to stifle passions, more particularly the passion which one sex have for the other?

A.—I said that it was my charm against pleasure; I had no occasion for it now; at that moment I gave myself up. I afterwards expostulated. I believe the word charm alludes to the medical properties of camphor. I wore it as a sedative; it is supposed to calm the passions, and quiet the nerves.

He then asked her if she did not remember throwing it out of the chaise window on some part of her journey, with such an expression as this: "I have no more need of this charm; I have given myself up. Welcome pleasure!" . . .

This she fully admitted. Mr. Abbott then pressed her to say on what part of the road this circumstance took place; but she said she could not remember. He then asked her, if she did not recollect the second time Lauden called upon her, asking him why Lockhart did not call? saying, "I suppose he has heard the report that I am a skeptic, and as he is a clergyman, he don't like to come into my company; but you may assure him he need not be afraid, for if he comes, I shall avoid introducing the subject of religion." Mrs. Lee admitted this as a fact. Mr. Abbott then asked her, if she ever went to church? to which she replied, No: she had not been to a church for several years. "I suppose, madam," (says he) "you do not approve of the doctrines of our church; you do not give your assent to them?" to which she replied, No. He then asked her, if she had not skeptical notions of religion? to which she frankly answered, that she had; that she did not approve of it, and that she had been skeptically disposed for several years.

"Nothing that passed in the chaise implied assent: and notwithstanding I was in my senses at Tetsworth when we sat down to supper, if I had the perfect exercise of my judgment, and had my mind been free from apprehension, I should have been more in-

clined to have ordered a chaise, than to have gone to bed. Had my affection for Lauden Gordon been ever so violent, I should have wished, under such circumstances, not to have indulged them. A stranger at Tetsworth, I knew nobody: Lauden came to bed —was there all night: that which passes between man and wife then passed. Cannot say I recollect the maid coming in the morning. I had no change of clothes—my mind is so confused I cannot speak to times, and say when Lockhart went away; but he went away in the morning. I afterwards saw Mrs. Edmonds. The ring was put on during the journey. I do not recollect rallying him; it occurred about a fortnight or three weeks ago; endeavoring to recollect what passed in the chaise—the ring must have been put on my finger in the chaise. I do not recollect saying, a compliance with the custom of the world would induce me to wear it. I recollect Lockhart's saying that he should return to a ball that night, that he might not be suspected of having any hand in this business. I positively assert that he said so. I did not learn what family was to be there. I saw the motive; because he would make it appear that I had gone with Lauden without his having had any hand in it. I knew before that he expected preferment; he said, I should consider his prospects. I told him he had destroyed mine. I considered him as the author of all this. He alone had made use of violent expressions; he alone expressed a determination that I should leave my house. He had said to Lauden, 'Don't stand here, but bring her out.' Lauden appeared almost as subservient as myself."

In the course of the examination, the following facts came out as to the proceedings at Tetsworth:

Q.—When you went upstairs, do you recollect a conversation with the maid?

A.—Nothing particular.

Q.—Nothing! Did you not tell the maid to send your husband up?

A.—When I went upstairs, the chambermaid asked me how long

it would be before I was in bed? or when the gentleman should come up? I replied, in twenty minutes.

Q.—Was any force made use of to induce you to give this reply?

A.—I was then under the impression that my life was in danger from Lockhart, and also of some serious scuffle at the inn, in which blood might be lost.

The learned judge observed, that it was impossible he could permit the trial to proceed further. The force had not been carried into the county of Oxford, and the prisoners must be acquitted. At the same time he could not help remarking, that their conduct was shameful in the extreme, particularly that of the prisoner, Lockhart Gordon, whose duty it was, he being a clergyman of the church of England, to instruct and guide the weak; instead of which he had most unworthily contributed to seduce and betray a defenseless woman, and plunge her into vice and dissipation. The prisoners were then led from the bar; Lockhart was discharged, but Lauden was detained on an action for debt.

## THE ABDUCTORS



## THE ABDUCTORS

*The Trial of the Wakefields for Conspiracy and for the Abduction of Miss Turner. Before Baron Hullock, at Lancaster, March 23rd, 1827.*

*Counsel for the Prosecution: Sergeant Cross, Mr. John Williams, afterwards Mr. Justice Williams, Mr. Brougham, afterwards Lord Brougham, and Mr. Starkie.*

*Counsel for the Defense: Mr. Scarlett, afterwards Lord Abinger, Chief Baron, Mr. Coltman, afterwards Mr. Justice Coltman, Mr. Parke, afterwards Baron Parke, and Mr. Patteson, afterwards Mr. Justice Patteson.*

THE story of the abduction of Miss Turner is not only entertaining as pure romance, but it is interesting as being one of the last of the Gretna Green escapades that sought solution in legal action. The bitterness with which English lawyers regarded the somewhat informal marriage laws of Scotland characterizes the conduct of the trial, which thus became something in the nature of a test-case.

Miss Ellen Turner was the only daughter and heiress of William Turner, Esq., a gentleman of considerable landed property, who lived at Shrigley Park, Cheshire. In February, 1826, Miss Turner had reached the mature age of fifteen and was a pupil at a boarding school kept by the Misses Daulby at Liverpool.

At about this time, early in 1826, a Mr. Gibbon Wakefield paid a visit to his friends Dr. and Miss Davies who lived at Macclesfield in Cheshire, and during his stay was informed of the fortune and expectations that Miss Ellen

Turner enjoyed. Mr. Wakefield was poor and was no match for an heiress, but he had that portion of daring and superficial cleverness which is so often the stock in trade of the needy adventurer, and resolved forthwith that his lack of eligibility should be no bar to his marriage. The Davies do not seem to have been privy to his plot, but he wrote to his brother, who was in Paris, to come back at once and lend a helping hand. Sadly enough for him, the brother, William, came and the two soon hatched the matter up between them.

A French servant, Thevenot, was sent with an empty carriage and a letter to Miss Elizabeth Daulby, the letter announcing the dangerous illness of Mrs. Turner, and stating that the private carriage of the physician had been sent to convey Miss Ellen home. The valet had been well schooled in names and dates, and the device went through without a hitch. Miss Daulby had no suspicions and, after a few inquiries, since the girl recognized neither the servant nor the carriage, she resigned her pupil to the care of the amiable stranger who took her safely to the Albion Hotel at Manchester.

At the Albion the carriage was met by Mr. Gibbon Wakefield, a gentleman of fashionable exterior and plausible address, who introduced himself to the school girl and explained that the illness of her mother was a mere pretext, the real reason for her being summoned from school being her father's financial difficulties, and that he, Wakefield, had been sent to escort her to her father who was unable to appear in person. It was a very thin story, but it served. Miss Turner appears to have believed it without hesitation, but one wonders how much the monotony of boarding school life and a healthy desire for adventure had to do

with her credulity. At any rate, the familiarity of the brothers, William Wakefield having joined the party at this point, with household words and happenings at Shrigley Park put to sleep any suspicion that might have been roused. The three set off, ostensibly to meet Mr. Turner, in reality for Scotland and Gretna Green.

On the road Miss Ellen was entertained by accounts of her father having sallied out to meet her but being pursued and prevented. Mr. Turner had made his fortune in commerce, and the serious financial crisis of the preceding year, which had been much discussed in the family circle during the Christmas holidays, had made a deep impression on Miss Ellen's mind. The party posted in a carriage and four, by a roundabout route, through Yorkshire to Kendal and from there to Carlisle. During the journey the brothers did their best to frighten Miss Turner with the story of her father's trouble, and they soon brought her to a point where the final development of their plot became possible. Miss Ellen was informed that the people surrounding the carriage at the inn door were bailiffs, that her father was lying snug in a back room, not daring to stir out for fear of arrest, that both the Macclesfield and Blackburn banks, where he had accounts, had stopped payment but, and now came the climax, that they had a rich uncle, as generous as he was wealthy, who had agreed, on the persuasion of Gibbon Wakefield, to advance £60,000 on the implied condition that Miss Ellen give her hand to Gibbon before the payment of the money. It was a curious security. Gibbon Wakefield even read, or pretended to read, a letter from Mr. Grimsditch, the family solicitor, advocating this course and alleging that only in this way could Mr. Turner be saved from ruin. I am inclined to doubt if a school girl of

to-day would be so gullible but, doubtless, I am wrong. The story was clever and nicely adapted to its purpose. The young Miss Ellen saw herself as a romantic figure, the savior of her family, the heroine of a runaway marriage and the most talked of person in the Misses Daulbys' school for young ladies.

At Carlisle there was no Mr. Turner, but there was a message from him to his daughter which told her that he relied upon her to hurry across the border to Gretna Green and relieve him from his difficulties. Miss Ellen obeyed, and was married at Gretna by the celebrated David Laing, blacksmith and marrying-parson. The marriage was not consummated, however, because the bridegroom was under the healthy but erroneous impression that "defilement" was a capital offense under the law. As a matter of fact, it was not. No case had occurred for a hundred years and the law had been repealed, though the marriage in Scotland had interposed a technical difficulty to any prosecution for felony. Of this Wakefield was not aware.

The marriage over, the bride was hurried away by forced marches, first to London and from there to Calais, a journey of between five and six hundred miles in five days, no small feat at that time. Miss Ellen began to feel rather less heroic, though thoughts of Clarissa Harlowe doubtless sustained her. The first that the Turner family heard of this amazing performance was through an announcement of the marriage, all in due form, in the *Morning Post*, and a modest paragraph which gave, among other departures from London, Mr. and Mrs. Edward Gibbon Wakefield for Paris. The Turners lost no time. Armed with a warrant, and attended by a Bow Street officer, Miss Ellen's uncles and Mr. Grimsditch hurried off to Calais and confronted

the newly married pair. The scene was unpleasant but brief. Wakefield lost his nerve and tried vainly to shelter himself behind the skirts of his bride. Miss Ellen, thoroughly disillusioned, repudiated Master Gibbon and all his works, and flew to the arms of her kinsmen. A French magistrate authorized the furious relatives to take Miss Ellen home and, no sooner had they done so than they commenced criminal proceedings, for a conspiracy, at common law against the two brothers, Edward Gibbon Wakefield and William Wakefield, and also against their French servant, Edward Thevenot, and Frances Wakefield, their step-mother.

A true bill was found at the Lancaster summer Assizes for 1826, but there were legal delays and the indictment was finally removed into the King's Bench where a special jury was struck to try the issue. The commentator whose record is before me laments the fact that "never was the opportunity for the display of eloquence of the highest order more completely lost and abandoned, on the part of the prosecuting counsel by inability, and of the defendants' counsel, Mr. Scarlett, by disinclination." But the day of forensic eloquence has passed, and I do not believe that the modern reader will regret the loss.

By seven o'clock on the morning of the trial the great shire-hall at Lancaster was packed with an eager audience. Here was romance and drama galore.

Mr. Starkie opened the indictment, and Sergeant Cross stated the facts at length. The action proper was then opened by the examination of Mr. Turner by Mr. Williams.

Mr. Turner stated:

That his daughter, Ellen, was an only child, and fifteen on the

12th of February, 1826, scarcely a month before her abduction. That he was in the possession of a landed property in the county of Cheshire, and of considerable personality. That he had been, in 1827, high sheriff of the county. That his daughter had been taken to school at Miss Daulby's in Liverpool. She had been at home from December to February, and he had not observed any alteration in her manner as to gaiety or seriousness, or in any other respect during that time. Before the month of March, 1826, he did not know the person of Mr. Edward Wakefield, or that there was such a person at all. He was equally ignorant of the existence of the other defendant; nor was his daughter in any degree of acquaintance with either.

Mr. Scarlett was far too adroit to badger Mr. Turner in cross examination, and so run the risk of antagonizing the jury. Hence, he only asked one or two unimportant questions.

Then Miss Elizabeth Daulby, the unfortunate school mistress, was called. She deposed:

That she and her sisters kept a boarding school in Liverpool, and that Miss Ellen Turner had been under her care for between five and six years; that when Mr. Turner took away his daughter at the Christmas immediately preceding, he left part of the account unsettled, being short of money. After Miss Turner had come back from the Christmas holidays, one morning in March, a servant arrived at her house in a private carriage, and delivered to her a letter, most skilfully penned, to lull suspicion. The person who brought the letter said he came from Shrigley; he was sent for Miss Turner; that Mrs. Turner was very ill.—I asked him when she was taken ill. He said, the night before, whilst at supper, the knife and fork dropped from her hand. I asked him if Miss Turner would know him. He said, she would not; he had been lately engaged by Mr. Turner to go to the new house.

This last was alone enough to clinch the matter for Miss Daulby because she knew that the Turners were, in fact, about to move into a new house. The witness continued.

I went and told Miss Turner that Mrs. Turner had sent for her, and wished her to go home; she was not so well as usual; Mr. Turner was absent; I then asked the man if she was to travel alone. He said, she was not; they were to take up Dr. Hull at Manchester. On Miss Turner getting into the carriage, she said it was not her papa's carriage. The man said it was the doctor's. She then left the house inside the carriage, and with the man on the barouche box.

Miss Daulby never discovered the deception until Sunday, the 12th of March. She was now cross examined, briefly, but cleverly.

She was very well educated (Miss Turner) was she not? I don't mean it as a compliment to you, but as a fact?—She had been well grounded as far as her education had proceeded.

But she had capacity?—Certainly, she had.

Rather clever, was she not?—Yes.

A very clever girl, was she not?—She had very excellent talents.

And very great quickness?—Yes.

And sagacity?—Yes.

Very quick at learning, was she not, always?—Yes, very.

And a very good temper and disposition?—Yes.

This was evidently an attempt to pave the way for showing that Miss Ellen had not been tricked, but had eloped of her own free will. Miss Daulby was now re-examined by Mr. Brougham.

My friend has asked you about Miss Turner's temper and disposition. What was her disposition, as well as her talents?—Her disposition was very good.

Now, was she of a suspicious, or of an easy, confiding disposition?  
—Oh! remarkably confiding, sir.

Not suspicious?—Not in the least.

Was she of an open and ingenuous temper?—Yes.

And remarkably confiding?—Yes.

Now, having offset the effect of the cross examination, the fraudulent letter was read. It was a very neat piece of work. The letter was dated Shrigley, Monday night, half past twelve, March 6th, signed John Ainsworth M.D., and addressed to Mrs. Daulby.

“Madam, I write to you by the desire of Mrs. Turner of Shrigley, who has been seized with a sudden and dangerous attack of paralysis. Mrs. Turner wishes to see her daughter immediately. A steady servant will take this letter and my carriage to you, to fetch Miss Turner; and I beg that no time may be lost in her departure, as, though I do not think Mrs. Turner in any immediate danger, it is probable that she may soon become incapable of recognizing any one. Mrs. Turner particularly wishes that her daughter should not be informed of the extent of her danger, as without this precaution Miss Turner might be very anxious on the journey; and this house is so crowded, and in such confusion and alarm, that Mrs. Turner does not wish any one to accompany her daughter. The servant is instructed not to let the boys drive too fast, as Miss Turner is rather fearful in a carriage.—Postscript. The best thing to be said to Miss Turner is, that Mrs. Turner wishes to have her home rather sooner for the approaching removal to the new house, and the servant is instructed to give no other reason in case Miss Turner should ask him any questions. Mrs. Turner is very anxious that her daughter should not be frightened, and trusts to your judgment to prevent it. She also desires me to add, that her sister, or niece, or myself, should she continue unable, will not fail to write to you by the post.”

Poor Miss Daulby! No wonder that she fell into the trap.

The prosecution next went on to establish the purchase of the carriage by the Wakefields, and the meeting of Miss Ellen and the conspirators at Manchester.

Mr. Carr, a coach maker at Manchester, proved the coming of the two brothers to his place of business on Monday, the 6th of March, to purchase a second-hand carriage of a dark green color; it was bought for £30, and directions were given that it should be sent that evening to the address of one, Captain Wilson. Mr. Edward Wakefield was the gentleman who had made the bargain with the witness, and had paid him with a bank post bill that had been lent by Mr. Bagshawe, the banker at Macclesfield, to Miss Davies the day before.

Houlgrave, a waiter at the Albion Hotel, Manchester, testified that the servant, Thevenot, and the lady arrived there about half past twelve on Tuesday; that the two Wakefields came soon after; that in five or ten minutes four fresh horses were ordered to be put to the green carriage; and that the party drove off, Mr. Edward Wakefield and Miss Turner inside, and Mr. William Wakefield on the box.

It appears that the Wakefields had separated, at the outset, Edward waiting for the girl at Manchester, and William spying at Liverpool to see whether she had left the school. The post-boy who drove the servant to the school was called, and testified that Mr. William Wakefield had gone with them and that, when he was near the school, Wakefield had ordered him to pull up, thanked him for the ride, and said he had given him a great lift. The servant, Thevenot, then said, "You are welcome." Thevenot then went

on to the school, and Wakefield waited near by to observe the result. A note, unsigned, but in William Wakefield's handwriting, was found at the Nag's Head at Warrington, a town midway between Manchester and Liverpool, and addressed to Captain Wilson, the assumed name of Edward Wakefield. This note, which recalls the famous trial of Bardell *vs.* Pickwick, read "Go you immediately to where we dined yesterday on cod and mutton chops. She is to wait for her father. She has just left this place at eleven o'clock. Write to Mr. Wilson at the same place from wherever you succeed." In the hurry of the pursuit this curious production was left behind, finally to throw fresh light in court on the tricks of the conspirators.

At this point the prosecution walked warily. It was not thought expedient to call Miss Turner herself, in this early stage of the evidence, to give the particulars of that strange interview in which the pseudo Captain Wilson introduced himself to the schoolgirl. The post-boys they did not dare call, for these gentlemen, who drove the trio on the first stages during that evening and night, could and would testify to the willingness and high spirits of the lady, who was very naturally elated at her romantic adventure. Her elation evaporated, however, after an all-night ride, as is made clear by Mrs. Holmes, the landlady of the Bush Inn at Carlisle. Mrs. Holmes deposed as to the arrival of Miss Ellen at her inn on Wednesday morning, a little before noon. "I went myself," said the old lady, "to ask her to alight out of the carriage; but one of the gentlemen (the taller gentleman) stepped on one side, and put his hand on the carriage door, and said, 'No.' A friend near me observed that the lady looked very dispirited; and it was on that account that I went to the carriage to ask her to alight;

and I thought it was my duty to go, which I did myself."

The carriage waited at the door of the Bush Inn for a quarter of an hour, and then drove off for Gretna, returning at about six in the evening, the marriage having been performed. It was, of course, the object of Mr. Scarlett to show for the defense that, after leaving Manchester, the lady had been a willing party to the elopement, and he did manage to bring out the facts that she was by herself in the carriage; that a waiter, named Atkinson, first opened the door; "because," said counsel, "we shall know whether the lady wished to get out or not"; that they had tea on their return, and left, after two hours, in a post chaise, the old carriage, unfitted to the strenuous use to which it had been placed, being broken and unfit for service. This was all well enough, but it certainly did not account for the fact that Miss Ellen's willingness had been procured by fraud.

Miss Curwen, a niece of the landlady, confirmed her aunt's notion that the lady was much depressed. "I said to Mrs. Holmes, the lady looked the very picture of despair. I thought so at the time." The lady had had a rather tiring night and day of it. Worse was to follow.

The waiter at the inn at Penrith—they were London bound now—testified that the party passed the night there, arriving about eleven, and going to separate rooms. Miss Ellen was first in the breakfast room the next morning, and sat reading a book (one wonders what book), seemingly entirely composed. When asked if she would take breakfast, she said, "I don't know, you must inquire of the gentleman." After a hurried meal, Edward Wakefield and his bride started for London in the mail, and are next heard of at the Brunswick Hotel, Hanover Square, at eleven o'clock on Friday night. Miss Turner was there seen in the bedroom

crying. Well she might! She had made a journey of several hundred miles, traveling almost continuously for four days and two nights, not seeing her father, and naturally growing more worried and perplexed as time went on. Heroines of romance have their troubles.

Wakefield only allowed Miss Ellen a rest of an hour and a half at the London hotel, and then the carriage and four were at the door again. Safety lay in France. It was during this short stay that Wakefield wrote the two paragraphs for the papers, one a formal announcement of the marriage of Mr. Wakefield at Gretna Green to the heiress of Mr. Turner, the other a bare line—"Mr. and Mrs. Edward Wakefield for Paris." It was this premature desire for publicity that gave the game away. The announcement was published the following day, Saturday, March 11th, and was at once seen by Mr. Grimsditch, the legal representative of Mr. Turner. Mr. Grimsditch acted quickly, but it was not until the morning of Tuesday, March 14th, that he had sufficient details to permit him to go to the authorities. Tuesday morning, however, he called on the Secretary of State, and procured a warrant from Bow Street. Then he started for Calais, accompanied by Mr. Robert Turner and Mr. Critchley, Miss Turner's uncles, by a Mr. Walford, and by Ellis, a Bow Street officer. They arrived at Calais the next day, Wednesday, the 15th of March.

Mr. Grimsditch was an able person, in speech as well as in action, and the remainder of his examination is too graphic to be given other than in his own words.

I first saw Mr. Edward Gibbon Wakefield in the courtyard of Quillac's hotel. I went up to him, in company with Mr. Robert Turner and Mr. Critchley, and mentioned my name and where

I had come from, and he appeared to know me. He said, "Oh! Will you be so good as to walk into my room." I went into his room with Mr. Robert Turner; we followed him upstairs, Mr. Robert Turner and myself, and went into his room.

I told him that we had come there by desire of Mr. Turner, to take back his daughter, whom he had taken away in a very improper manner. He said, "But I understand you have taken legal proceedings against me." Then, pointing to Ellis, the Bow Street officer, who had come in rather suddenly, he said, "Who is that man?" I desired Ellis to withdraw, which he did, and I told him that we insisted upon seeing Miss Turner immediately. He said, "I wish to know whether you intend to prosecute me?" I told him we did intend to prosecute him; how could he expect anything else? That he had stolen Miss Turner—and I told him I had a warrant in my pocket, and a despatch from Mr. Canning to Lord Granville at Paris. He said he knew all about that warrant, and all we had done in London—his friend Percy had come in the same packet. Mr. Henry Critchley then entered the room. He again asked whether it was really intended to prosecute? and I told him that the strongest measures had been resorted to, and would be—he could expect nothing else. But the first thing I demanded was, to produce the young lady; and I asked him (in a peremptory tone) to give me an answer, Yes or No. He then asked, with some agitation, "But is she to be my wife?" I told him he could not enter into that question; that the act he had been guilty of was a most atrocious one; that he had got possession of Miss Turner, whom he had never seen, a mere child, by means of a forged letter; and that he deserved to be shot.

Upon your observing that, what further passed?—I also added upon that occasion—I said, he had struck a blow at the peace of the family, the effects of which he never could repair, or to that effect; that I thought it would be the death of Mrs. Turner, if she was not dead already; and that we had left Mr. Turner in

London broken-hearted, and unable to go another yard after his lost child.

Well, sir?—He said, my animadversions were severe, but that he did not attempt to justify his conduct, that he had a daughter. His words were, “I have a daughter, and if any man were to take her off in the same manner, I believe I should send a bullet through his head.” Then he added, “But is the marriage legal? If it is, I must keep her; if it is not, I can have no claim on her.” I told him it was not only illegal, but that he was liable to severe punishment. I told him there was an Act passed in the reign of Philip and Mary which declared such a marriage void, and also subjected the party to heavy punishment. I said, “It is useless to go into these discussions; we are authorized to take back Miss Turner, and take her we will!” Mr. Critchley and Mr. Robert Turner both joined in peremptorily demanding to see her; and I told him that I should seek the assistance of the police at Calais if he refused. He told me that he had more interest with the police than I had.

Was anything said about who should see Miss Turner first?—He said, if she was to be his wife, it would be desirable that certain questions should not be put to her, and certain facts not disclosed; and desired us not to disclose such particulars as he would point out, nor put such questions as he would mention, for her own sake, if she was to be his wife.

Well, did he say what she would do, or was likely to do, when she saw you?—He again spoke of her being his wife. Mr. Critchley said to him, “I wonder how you can expect that we can enter into such terms!” or words to that effect; and he added, “We must first see her; you may have made some impression upon her”:- those were the expressions of Mr. Critchley.

Well, now, what answer did he make to that?—He said, “Oh, as to that, you will find her perfectly passive. She may think

favorably of me; but nothing compared to the unbounded affection she has for her parents. I dare say she will fly to you, and from me, when she sees you." He also said, "I should wish to make every reparation"; and again he said, if she was to be his wife, he was anxious that certain facts should not be disclosed to her, and desired that he might be present at our interview. Mr. Wakefield then went, and in (I should think) two minutes, brought Miss Turner from a room which was said to be Madame Quillac's room. I went upstairs before them, and showed her into the room where her relations were, and shut myself and Mr. Wakefield out. Upon that, he said to me, "Well, Mr. Grimsditch, I assure you, upon my honor, that Miss Turner is the same Miss Turner as she was when I took her away; there has been no consummation of the marriage." I told him I was very glad to hear him say that. I then went into the room where Miss Turner was with her uncles, and I learnt then the particulars of the falsehoods and frauds which had been practiced upon her.

You had not heard what passed in the room?—Not what passed previous to my going in. In about twenty minutes, I think, we sent for Mr. Wakefield, according to Mr. Critchley's pledge, and when he came in I said to him, "We find that you have practiced upon this poor child the most extraordinary deception and fraud ever heard of." I said that it was a very cruel case; that we should not only take her from him, but that we should put him into the custody of a Bow Street officer. He told me I was on the wrong side of the water for that. I told him the police would assist; and I again produced the despatch which I had procured from Mr. Canning, but he told me that neither that nor the warrant would avail. He said he claimed her as his wife. We had much discussion about it. At length Mr. Critchley said, "I am quite sure, Mr. Wakefield, it is an illegal marriage"; but he still said he claimed her as his wife. And, upon that, Miss Turner spoke for the first time in Mr. Wakefield's presence. Upon Miss

Turner hearing him say that, she said, "I am not your wife; I never will go near you again—you have deceived me." In saying this, she clasped her uncle, Mr. Critchley, round the shoulders in wild agitation.

When she clasped her uncle round the shoulders, what did she say?—She said, "I am not your wife; I never will go near you again—you have deceived me." Mr. Wakefield said to her, "You must acknowledge that I have behaved to you as a gentleman." She said, "Yes, I do acknowledge that; but you have deceived me, and I will never go near you again." He adverted very frequently to the legality or illegality of the marriage; and I said to him, "I am surprised that you can for a moment suppose that this is a legal marriage!" and I told him that he must know as well as I did that a marriage obtained by force or fraud could not be legal. He said he had not used force. I said, "What do you call it, then? you got possession of her by means of a forged letter—she was wholly in your power"; and I added that he had taken her off in a chaise and four and conveyed her away by deception and fraud from beginning to end.

What did he say to that? He said, "I do not attempt to justify my conduct." And he repeated again, if anybody had behaved so to his daughter, he believed he should have shot him, unless reflection at the moment should have restrained his passion.

It was rather a remarkable interview, there in the stuffy little inn at Calais. Certainly it had its *Pickwickian* qualities, for Mr. Grimsditch reminds one of Mr. Perker himself, and Edward Wakefield is not wholly unlike Mr. Jingle with his backbone taken away. I cannot, however, insult Miss Ellen, aged fifteen, by comparing her to the maiden-aunt, although perhaps it is the maiden-aunt who would be most insulted! Undoubtedly, Wakefield made a bad

showing. He seems to have been at once frightened, remorseful and defiant. It is a pity that no definite picture of the man has come down to us; his background, his age, his appearance, his daughter, and the circumstances that brought him to the point of crime. Fairly clever, but not clever enough; daring, but not sufficiently daring to carry the matter off, Wakefield is a curious mixture. His respect for Miss Ellen's virginity was unfortunate, for him. If the marriage had actually been consummated, the Turners might have felt that there was nothing to do but admit the legality of the whole performance. It might have saved him. One wonders too why he did nothing, apparently, to endear himself to the lady during the time they were together. It might have prevented her prompt denial of him when the show-down came. But, indeed, Wakefield seems to have been a bit afraid of her. In a letter to his brother, William, dated from Calais on Thursday, the day after the interview, the chief conspirator gives his own version of the affair, but he is obviously putting the best face on it that he can muster. The letter was admitted in evidence at the trial immediately after Mr. Grimsditch had left the stand. It read as follows:

"My dear William:—I write in haste to save the post, only to give you news, and nothing else. Mr. Robert Turner, Mr. Critchley, and Grimsditch arrived with the packet to-day with warrants, &c. I soon knew what they were come for, but would not attempt to avoid the question. Shortly, I saw them, and found that, with Ellen's consent, they could take her away. They insisted on seeing her. I could not object. She *told all*, and was anxious to leave me, *when she knew all*. I expected as much, and therefore made a merit of necessity, and let her go. They tried to take me, but for that they were on the wrong side of the water, as I well knew.

However, I offered to go with them, but begged Mr. Critchley to believe that I would be in England to answer any charge, as soon as I had seen my children and settled my affairs. Nothing could be more hostile than the whole spirit of their proceedings. I could readily have escaped with Ellen, but their account of Mrs. and Mr. Turner's state made such a step impossible. I made and gave in writing a solemn declaration that she and I have been as brother and sister. How this may affect the validity of the marriage, I know not, nor could I raise the question: I was bound, and it was wise, to give some comfort to Mr. Turner. I am now in a stew about *you*, and wish that you were safe. There can be no doubt that the law can punish us. For myself, I will meet it, come what may; but, if you are able, get away as soon as possible: I do not care a straw for myself. The great question now is, is the marriage legal? They all said no, and quoted William and Mary upon me till I was tired of their majesties' names. Pray let me know that. But I write to Nunk. Do not stay—you can do no good. I shall go to England as soon as possible; upon this you may depend. I shall not write again till I hear from you, for fear of accidents. Percy came with the trio, and has witnessed the row. We start early in the morning. Pray write, but say nothing to anybody. I am the person to speak.—Yours ever, E. G. W."

The legal drama now reached its most interesting point. Miss Turner was brought into court. Before she could be sworn, however, Mr. Scarlett rose to object to her evidence and, during the discussion that followed, Miss Ellen was absent.

The dispute turned upon the legality of the marriage. Mr. Scarlett contended, first, that the marriage was valid and, second, that no wife could be called upon to testify against her husband. The court, Mr. Baron Hullock, was dubious, in the first place, because the illegality of the mar-

riage could only be proven through the testimony of Miss Ellen, and in the second, because, even if the marriage were valid, still, in some instances, a wife's testimony was admissible. The battle raged, the lawyers for the prosecution hurling themselves into the fray with all the ardor and skill at their command. It was the old story of the law of Scotland at odds with the law of England, and fine legal points were made and unmade until the spectators must have been dizzy. As the issue was a matter of practice, its determination depended entirely upon the decision of the presiding judge. Mr. Baron Hullock decided in favor of the prosecution and requested Miss Turner to be called. Mr. Scarlett took an objection which the court assured him would come to nothing. So Miss Ellen took the stand. She was examined by Mr. Sergeant Cross and, omitting introductory and irrelevant matter, she proved in the most naïve manner the outline of her interview with Mr. Edward Gibbon Wakefield when he met her at Manchester in a room at the Albion Hotel.

I was rising to leave the room, and he requested I would not go. He said he was commissioned by my papa to take me to him. I might be sure it was no slight circumstance that prevented my papa from coming for me himself. That it was the state of my papa's affairs which had induced him to send for me home. I remarked that it was on account of my mamma's illness that I was sent for home. He said that the facts stated in the letter to Miss Daulby were not true; that that letter had been written because they did not wish Miss Daulby to know why I was sent for. He told his servant to tell the other gentleman to come in. He did not introduce him; he merely spoke to him as his younger brother. I stepped into the carriage, imagining that I was going to meet my papa. Mr. Edward Gibbon Wakefield said that if there was no

letter at Halifax, and if we did not see my papa there, we must proceed as far as Kendal. We should be sure to find him there. At Kendal, Mr. Wakefield read a letter at the chaise window, and his brother looked over it, but I did not see it.

This letter was, supposedly, from Mr. Turner and, one would think that the fact that she was not permitted to see it would have aroused Miss Ellen's suspicions. Still, she was only fifteen and, it is not to be doubted, she was enjoying the thrill of the experience. Her further testimony, giving the alleged contents of the letter, is remarkable as showing the story she was called upon to swallow. Only her youth and naïveté can explain her acceptance of a tale as ingenious as it was absurd.

He said that my papa was not there, but was gone forward. We proceeded forward. On the way Mr. Wakefield said that he had received a letter from my papa commissioning him to inform me of the state of my papa's affairs. He said that a bank had failed at Macclesfield, Ryle and Daintry's; that my papa had been almost ruined, but that an uncle of his (Wakefield's), who was a banker at Kendal, had lent my papa the sum of £40,000, that had relieved him for the present; that afterwards a Blackburne bank had failed, and that then his affairs were in a worse condition than before; that his uncle then demanded, as security for the sum which he had lent, the estate at Shrigley; and my papa might be turned out of doors any day. He said that it had been suggested by Mr. Grimsditch, I believe, that he, Mr. Wakefield, should be my husband, that then the property would be mine, and that then it would be in my power to turn my papa out of doors if I liked, but of course I should not think of doing it. I did not make any reply to this at that time; this passed on the stage from Kendal to Carlisle. He adverted to the subject again before we got to Carlisle, and frequently said he was desirous to know what conclusion I had come to.

He had said that I should see my papa, and then he said I should give the answer to him. Mr. Wakefield said that my papa was attempting to cross the border; the sheriff's officers were in pursuit of him.

While Mr. Wakefield's story was well calculated to play upon the emotions of a young and romantic girl, it was so full of holes and improbabilities that one wonders that he dared to try it at all. No person of mature years and ordinary common sense would have been taken in for a minute. But, alas, common sense is never ordinary, and maturity only comes with years, when it comes at all, and Miss Ellen swallowed it, hook, line and sinker. Her testimony continues:

Just as we were leaving Carlisle, Mr. William Wakefield, after having drawn up the carriage windows, said he had something of importance to communicate to his brother. He said he had seen my papa at Carlisle, and that Mr. Grimsditch was with him. That he was there concealed in a small room at the back of the house. That he had made two attempts that day to cross the border, but could not. He said the persons whom I had seen round the carriage door were sheriff's officers in search of my papa. That Mr. Grimsditch had intimated that Mr. William Wakefield should not stop in the room or they would be discovered, and that he had taken him by the shoulders and turned him out of the room. He said that my papa requested, if I ever loved him, that I would not hesitate to accept Mr. Wakefield as a husband.

What did you say to that?—I consented.

What induced you to consent?—The fear that if I did not, my papa would be ruined.

Did you believe what he had told you upon that subject?—I did.

The fact of a marriage was thus discreetly slurred over by the counsel for the prosecution. Mr. Scarlett was equally

discreet in his cross-examination, for he knew that to harass this witness of all others would be to arouse the jury against him and his clients. He asked few questions.

Will you allow me to ask you two or three questions? I shan't trouble you at any length. You went through a form of ceremony of marriage in Scotland; did not you?—Yes.

And you had a ring?—Yes.

The ring was too large for you, I believe, was it not?—It was, rather.

Another was bought for you at Calais afterwards, I believe?—Yes.

You dined in Scotland?—Yes.

And believed yourself the lawful wife of Mr. Wakefield at that time, did you not?—Yes.

And you remained in that persuasion until you were otherwise informed at Calais?—Yes.

Did you write a letter to your mother?—Yes.

Did you use the name of Wakefield?—I did.

When you saw your uncle and Mr. Grimsditch at Calais, they assured you that the marriage was void?—Yes, they did.

The case for the prosecution closed with the evidence of Mr. Critchley, the brother-in-law of Mr. Turner, who confirmed the statement of what had occurred at Calais and added two important particulars.

I asked Mr. Gibbon Wakefield how he could commit so flagrant and cruel an act as to carry off a mere child, whom he had never seen. He admitted that he had never seen her before he got to Manchester; that she was represented to him as a very fine girl, and the heiress to one of the largest fortunes in the country; and that he was determined to possess himself of her. In the course of conversation I certainly told my niece that I had every reason to

believe it was an illegal marriage, and she exclaimed, "Thank God for it! It is the happiest intelligence that could be conveyed to me."

Somehow, I am inclined to doubt that Miss Ellen made use of the precise phraseology ascribed to her by her uncle, unless the fifteen-year-olds of 1827 were considerably more pedantic than those of to-day. However, it really doesn't matter.

The chief conspirator was now run to earth, and the prosecution closed its case against the two brothers.

At this point it must be admitted that the original account of the case is highly involved and very badly written, so that it is only by deduction that it becomes clear that Mrs. Frances Wakefield, the stepmother of Edward Gibbon and William, is also the Miss Davies with whom the two brothers stayed during the formation of the conspiracy. Her marriage to Mr. Wakefield, senior, may have taken place between the time of the abduction and the trial; doubtless it did. Certainly, no other theory will explain the situation. The evidence against Mrs. Wakefield, *née* Davies, was of several varieties, some of it trivial and some rather conclusive.

Mrs. Brocklehurst, a lady of the neighborhood, spoke of Mrs. Wakefield's making a morning call on her in February, and expressing a wish for an introduction to Mrs. Turner. In consequence of this the two ladies called at Shrigley. It would be an absurd straining of suspicion to argue any sinister motives for this call and for the conversation that followed. Mr. Scarlett cross-examined with more asperity than usual.

Pray, did you ask after Miss Turner too?—Yes, I did.

Did you do so extraordinary a thing as to ask after Miss Turner?—I did not consider it extraordinary.

Very well. Did you ask after her?—Yes.

Do you remember asking Miss Davies, when she was going abroad, to call upon your brother at Versailles?—Yes.

You requested that particularly, did you not?—Not particularly: I think I gave her a letter to take. (Here the witness turned around to some one behind her and said,—Did I, Mary?)

Who keeps your memory in reserve for you?—I quite forgot it myself. I was asking my sister who sits behind me.

I dare say that at many of the visits you make in a morning a good deal of gossip takes place that you forget?—Very probably.

But is it not certain?—Quite certain.

Mr. Grimsditch also testified to circumstances, unimportant in themselves, but significant when taken together.

Miss Davies called him from his office to see her on horseback in the street: the two Mr. Wakefields were on horseback with her. She asked leave to ride round the grounds at Adlington on their way to Shrigley. On Saturday, March 4th, they met in the street, when Miss Davies said, "I believe Mrs. Turner is very ill." I told her that she was very ill; and then she asked me what was the nature of her complaint. I told her that it was said by the doctors to be a determination of blood to the head, but that from her appearance I thought it had been an attack of paralysis. She then talked about Mr. Turner's going to the assizes as Sheriff. I told her he was going to London in a day or two, I thought on Monday evening. She said, "I think you are a good deal in London; you are probably going with him." I said, I was going, but not with Mr. Turner.

This was still very circumstantial, but it was highly suspicious. What followed was less to the point. Mr. Robert

Bagshawe, a banker of Macclesfield, testified that he had paid over certain sums to Miss Davies, and identified two notes as being a part of this payment. It was then shown that one of these notes was given by Gibbon Wakefield in payment for the carriage, and the other changed by him at Penrith. It was not shown, however, that Miss Davies gave these notes to Wakefield for any guilty purpose or with any knowledge of how he was going to use them. Miss Davies did, indeed, lie to Bagshawe when she borrowed the money, but that need not imply a guilty knowledge on her part. Several letters of Miss Davies' were also put in evidence, but only one of them appears to be important.

Dear William,—Mr. Turner did not come down the night you left: it was a mistake.—My father saw Mrs. Critchley yesterday, who seems very kindly disposed, but she did not know what her brother's feelings would be: perhaps Edward or Madame ought to write to her, touching tender chords. The old uncles have been written to by her wish. Miss Daubly has not yet written to Shrigley, but Miss Turner (the niece) wrote to her yesterday. This is all Mrs. Critchley's information to my father.—Ever aff. yours, F.—You must not let a foolish account of the affair get into the papers. It would much annoy Turner, I am sure.

One can make about what one likes of this production. The letter was without date, and was read without any explanation of the manner in which it had been obtained. It may have been important and it may not. Mr. Scarlett contended that the State had not made a case against Mrs. Wakefield and that no defense was needed. He said:

I am exceedingly glad to observe, in the progress of the cause, that the evidence against one at least (Mrs. Wakefield) is so ex-

ceedingly slight, that I trust your lordship will be of opinion I may dispense with the trouble of making a case on her behalf.

His lordship was not of this opinion, however, and, accordingly, Mr. Scarlett addressed the court in a short speech in which he pointed out that the evidence against the lady was all circumstantial, and might be used to convict any one of a dozen friends of the Turners. This was rather less than the truth. Later, at the close of his evidence for the two brothers, Mr. Scarlett reiterated this point, remarking, as he quitted the court:

I feel it my duty to say, with respect to Mrs. Wakefield, that I really do not feel it necessary to offer to your lordship any evidence. I think so conscientiously; otherwise I should not say so. I have witnesses, but it does not appear to me to be necessary to trouble your lordship with them.

In opening his defense of the brothers Wakefield, Mr. Scarlett addressed the jury in the tone of one who was frankly annoyed with his case. His speech resolved itself into two portions. The first admitted the abduction and the guilt of the defendants; the second contended that, once the abduction was accomplished, Miss Ellen was speedily undeceived and was a willing party to the marriage. He said, in this connection:

I neither express nor feel any satisfaction or pleasure at it (the legality of the marriage), far from it. I have no feeling on the subject one way or another, but I shall prove to you the marriage is clearly legal. Miss Turner did not desire or wish to return back to her father; after she got into the carriage, and before she got the first stage, she gave her full and free consent to the marriage, and

knew what was going to happen. All these circumstances which I have stated we have thought it proper to bring witnesses to prove, for the purpose of making a case, should it become necessary, and which never would have been made at all but for the declaration that the marriage was illegal. I shall prove by the law of Scotland, and by the law of England too, that this is a legal marriage.

*Mr. Baron Hullock.*—I am of opinion that the evidence you have opened, except that which goes to show the validity of a Scotch marriage, is quite immaterial to the present indictment. I consider that the offense stated on this record, if it be satisfactorily proved to the jury, was committed when they were at Manchester, the moment they left Manchester, and it is no matter what inducement was used afterwards, or however efficient that inducement was, however prevailing the promise, or whatever may have been used afterwards to induce her to acquiesce in the marriage, that that will not alter the nature of the offense. Whatever was done afterwards may alter the nature of the punishment, may alter the quantity of the punishment; it may be brought forward on that occasion. I don't mean to say it may not—but I shall tell the jury it is no issue in this cause, and ought not to bear at all on this question. If you feel there is anything in it, Mr. Scarlett, I will hear the evidence.

The defense was thus left in a dubious position. If Mr. Baron Hullock's ruling was correct, as it was, the evidence that the defense proposed to call, to show that the marriage was by Miss Ellen's consent and that it was legal, had nothing to do with the indictment. And, so far as what happened at Manchester and immediately thereafter was concerned, no defense was possible. Mr. Scarlett had no option but to proceed along the lines he had indicated and to trust to fortune, or abandon the case. This last he, naturally, could not do. Accordingly, the defense called a motley assem-

blage of witnesses, landlords, postboys and chambermaids, who were summoned to show the liveliness of the young lady during the process of abduction. Their testimony amounted merely to this. She might have sent a message to her uncle who lived two or three hundred yards from the Albion Hotel, had she possessed the presence of mind to think of it. She, shocking to relate!, shook hands, according to the waiter, on first meeting Mr. Wakefield. They were in such good spirits in the carriage that the hostler asked the driver whether he had got players with him. He supposed it had been a wedding. At Settle they had gingerbread, and she laughed loud enough for two. She played at draughts at Carlisle with Mr. William Wakefield, and the postboy who drove them to Gretna saw her turn around at the wedding "as if partly to meet Mr. Gibbon Wakefield with a kind of kiss as might be." It was all petty enough and natural enough and, when Sergeant Cross rose to cross-examine, his sardonic expression heralded the rough contempt with which he handled the witnesses.

Well, did they not quarrel or fight?—No.

My friend had asked you every question, but whether the gingerbread was good. Was it good?—Very good.

She appeared to you to be in as good spirits as a young lady would be in going from school to see her parents, did she?—She was in very good spirits. I thought they were brothers and sister.

And you actually saw her smile, did you?—Yes.

Indeed!

The landlord at Gretna and his daughter having testified to the cheerful and affectionate manner of the bride—and why should she not be cheerful and affectionate?—the celebrated David Laing, blacksmith and marrying parson, was

called to prove his marrying the couple on the eighth of March. This witness provided the most amusing testimony of the trial, and his examination certainly throws a strong light on life and times at Gretna. Mr. Laing was very old, very deaf and very illiterate. Ushered in as a gentleman residing at Spring Field near Gretna Hall, he testified to his finding two gentlemen "as it may be" and a lady at Linton's, and thus showed his qualifications for officiating as a priest. This was on direct examination.

What did the gentleman say to you?—Sir? What did the gentleman treat me with?

No. When you got to the inn, you say you found two gentlemen and a lady there?—Yes.

What did the gentleman want you to do?—He wanted me to do what I had done to many a one before.

Was that to marry him?—To join them together; to join hands, and so on.

Did you make a bargain with the gentleman to marry him?—Yes, I did.

Was that bargain made in the presence of the lady?—Yes.

Did she seem agreeable to it?—Yes, perfectly; she had no objection.

Did you marry them in the usual form in Scotland?—In the Scotch form.

Was there a ring produced?—There was, sir.

Was it put on the lady's finger?—It was.

By whom? By the gentleman?—By myself.

Now, how did the ceremony conclude?—They seemed both agreeable to join hands, and take one another for man and wife.

Well, what was the end of the ceremony?—Well, I wished them well, and shook hands with them, and so on.

Well, was there a salute?—Yes, they both embraced one another, and seemed to be very agreeable, apparently.

Did you ask the lady for anything?—I told the lady that I usually had a present from them, as it may be, of such a thing as money, to buy a pair of gloves.

Well, did you get any from her?—I did, sir. She gave it me with her own hand, but where the lady got it from, I cannot say for that, you know.

What was it you got?—A twenty shilling Bank of England note.

Well, did they sit down together afterwards?—Mr. Wakefield asked me what sort of wines there were in the house, and I told him there were three or four different sorts of wine, with the best of shumpine. He asked me which I would take, and I said shumpine, and we had a bottle of shumpine. They were going to dine.

Were they in good spirits after dinner?—Yes, they were in the very best, comfortable spirits.

Both the lady and the gentleman?—Yes.

The final answer, “it was done in the old, ordinary form of the church of Scotland,” roused the ire of Mr. Brougham of the prosecution, who was especially bitter against the Scottish marriage laws. Mr. Brougham rose to cross-examine, his tongue envenomed by righteous indignation.

What do you mean, by the ordinary form of the church of Scotland, when it had nothing to do with the church?—That is the way it has been done for centuries.

Are you a Scotch clergyman?—No, I am not.

What are you? Have you any trade at all?—Nothing at all.

Do you mean to say you were never an ostler?—Me an ostler! No.

How long have you been engaged in the traffic of making this sort of certificates?—Eight and forty years.

How old are you?—I am beyond seventy-five.

Well, before the last eight and forty years what did you do to

get your livelihood? That is my question.—Why, I was a gentleman, sometimes poor and sometimes rich.

Well, when you were poor, what did you do to get your bread? What occupation did you follow?—I followed many occupations.

Let me hear one of them?—I was a merchant.

What do you mean by a merchant? A traveling merchant, a peddler?—Yes.

Now I come back to what you call the marriage. What do you mean by this being the common form of the church of Scotland? Do you mean to say that nobody is ever married in Scotland by ministers?—Yes, they are.

Is not that the general way?—No, not the general way altogether. If you go before a person and own yourself to be man and wife, that is the way to marry in Scotland, in general.

Reexamined by Mr. Scarlett, the old man held bravely to his point, but even the reexamination failed to establish Mr. Laing on a very firm basis. The witness sturdily maintained, "It may be an unregular mode, but it is right still."

You married these in the regular mode, did you?—I married them as many a hundred has been married before; and I have been in the courts, both in Edinburgh and in the city of Dublin, and my marriages have always been held good.

What form of words do you use?—Well, you come before me and say . . .

No, I don't want to be married! But suppose anybody did, I want to know what form of words are used. Do you make any declaration between the parties?—I ask them whether they take one another for man and wife, before myself and two witnesses. That is the mode in Scotland.

Well, when they say that, do you make any declaration, or what do you do?—Why, they embrace one another, and so-and-so.

Tell us what the so-and-so is. I don't want to be married,

but some of my friends here do, and they want to know the ceremony. What is the so-and-so? What do you say?—After they take one another by the hand, I say, "Now I declare you so-and-so."

What is it you declare? What are the words you use? You declare them what?—I declare them to be man and wife before the witnesses, and so-and-so. That is the Scotch rule.

This so-and-so witness was succeeded by Monsieur Quilliac, who had been brought from Calais to prove that Monsieur and Madame Wakefield passed as man and wife, and went to the play together. He also produced a plan of the apartments they had occupied at his inn, a saloon and two chambers, each with a bed. The defense called its most important witness, so far as the legality of the marriage was concerned, Mr. Duncan M'Neill, an advocate of eleven years' standing at the Scottish bar. On direct examination he testified that:

Taking the facts as they had been spoken to, to be accurate, the proceeding that had been stated to have taken place at Gretna was all that was necessary to constitute a marriage, if it stood by itself without any other evidence, and that he had not heard anything that took away, in his opinion, from the valid effect of that ceremony so performed, taking into consideration the evidence that was given by Miss Turner.

Mr. Brougham, in his cross-examination, showed that he had made a very thorough study of the Scottish marriage laws but, even so, he was unable to contend successfully with Mr. M'Neill, who had had, naturally, a much wider experience and who was very sure of his ground. The cross-examination, which really resolved itself into an argument between Mr. M'Neill and Mr. Brougham, was full of fine

technical hair-splitting, interspersed with Latin tags. The gist of it was simple. A marriage by *force* was a serious offense under the laws of Scotland and was punishable as such. A marriage by *fraud*, however, did not invalidate the contract, unless the fraud involved the identity of one of the contracting parties. Clearly, in this case, there could be no question of identity, for both Miss Turner and Mr. Wakefield used their own names and appeared in their proper persons. In his reëxamination of Mr. M'Neill, Mr. Scarlett brought this out flatly, that no deception short of identity was sufficient to invalidate a marriage under the laws of Scotland. This was a blow both to Miss Ellen and to Mr. Brougham, but the decision stood and, as a matter of fact, it was necessary for parliament to pass an act, in the following year, which granted a divorce to Miss Turner.

Sergeant Cross now rose for the prosecution, and spoke pointedly and with considerable heat. He remarked that the last five hours had been taken up with the validity of the marriage, which was an issue, as the court had already pointed out, entirely irrelevant to the indictment. The defendants were on trial for conspiracy, and conspiracy had been proven, whether the marriage was valid or invalid. The Sergeant disdained to discuss further the guilt of the two brothers, which he considered too clear for question, and devoted himself to driving home the criminal culpability of Mrs. Frances Wakefield. Baron Hullock, who then summed up, made it clear that he was far less satisfied with Mrs. Wakefield's guilt than was the counsel for the prosecution. Nevertheless, the jury, after being out three-quarters of an hour, returned with a verdict of guilty against the lady. The prosecution, however, remained content with the

registration of the verdict, and Mrs. Wakefield was never called up for judgment.

So far as Edward and William Wakefield were concerned, there was not the slightest shadow of doubt as to their guilt. They were unmistakably guilty of conspiracy as charged in the indictment, and a verdict was returned against them forthwith. In the following term, the brothers were brought up for judgment. Three counsel were heard at length in the effort to emphasize the guilt of Edward, and three more counsel were heard in the attempt to mitigate the guilt of William, the younger of the two. The six speeches might have been saved for a like sentence was passed on each of three years' imprisonment.

Miss Ellen, after her divorce, married a Mr. Leigh of Lyme, and died young, leaving one daughter. One can be sure that, during her life, she never lacked a subject for conversation. Romance she had known, but at a price.

Of Edward Wakefield, the chief conspirator, it is related that after his term in prison he "took an active part in colonizing New Zealand, and appears to have sought by the labors of mature manhood to redeem the sin of his youth." It is to be hoped that he was successful.

# THE SKELETON IN THE GARDEN



## THE SKELETON IN THE GARDEN

*The Trial of Bastien and Robert, in Paris, in the year 1833, before the Assize Court of the Seine, for the murder of Madame Houet.*

ON the 26th of April, 1833, a singular party arrived in two carriages at the door of 81 Rue de Vaugirard, Paris. From the first, alighted a man of middle age, of shrewd, determined aspect, carrying in his hand an official looking bag, crammed with papers. He was followed by a short, stout man, well dressed, and wearing an enormous pair of green spectacles. The rear was brought up by another individual, tall and thin, apparently a mechanic of the better class, whose air was gloomy and downcast in the extreme. The last two persons, on descending from the carriage, were surrounded by a municipal guard and some followers, who seemed to be awaiting their arrival.

The second vehicle brought a gentleman who carried a case of surgical instruments, and who respectfully made way for his companion, no other than the celebrated analytical chemist, M. Orfila.

“Monsieur the Attorney-General,” said the latter, in a grave, musical voice, as he shook hands cordially with the person we have first described, “my colleague, Dumoutier, and I await your direction. What is the business? Poison? Autopsy?”

“Neither,” was the answer, with a smile. “Archæology.” With this ambiguous reply, he conducted the party, by

a small back door, into the damp and weed-grown garden of the house, and towards a table covered with black cloth, which had been placed under an old mulberry tree, and on which writing materials were displayed, as if in preparation for an official inquiry.

The party now surrounding the table was composed of the magistrate, with M. Orfila, and the surgeon, a clerk, the municipal officer and his two assistants, each of whom kept a careful hold upon one of the men in custody. A pace or two away, close to an apricot tree, which was trained upon the wall, stood two laborers, spade and pickax in hand, evidently awaiting orders.

The magistrate ran his finger across a plan that lay on the table before him and, pausing at a red cross, and glancing to the apricot tree, said, quietly, "Begin there."

The men dug. After working a few minutes, the pickax of one of them sank into an excavation. At this, the short prisoner with the green spectacles made a sudden movement, and even into the dull, dead eyes of his companion there came a momentary glitter. The officers, as if involuntarily, tightened their grasp, as the magistrate, addressing the laborers, instructed them to proceed with the greatest caution, so as to injure nothing.

Carefully trenching the soil, they presently came upon a bed of lime, forming a sort of hard coat. It was into this the pick had penetrated. Removed in fragments, a narrow grave came into view, about four feet from the surface, and, at the bottom of the grave, a skeleton, perfect in every detail, the teeth and hair complete as in life. Around the neck was a four-times knotted cord. There was a wedding ring on the finger.

"It is quicklime," remarked M. Orfila, "but they have



SICKLES SHOOTING KEY. MR. BUTTERWORTH OF NEW YORK,  
SICKLES' FRIEND, IS LOOKING ON



MADAME DUMOLLARD—WIFE OF THE WOLF

forgotten the necessary moisture, and what was, no doubt, intended to destroy, has only preserved. The flesh has disappeared, but the skeleton is perfect. Well, monsieur the magistrate, what do you wish us to do?"

"A miracle, gentlemen," was the answer, "and I offer you the assistance of these two gentlemen, Doctors Marc and De Loury" (who entered as he spoke), "in effecting it. I wish you to reclothe these bones with flesh, to tell me to whom they once belonged, the sex, the age, and exactly how long they have rested in this grave."

"Nothing is easier for my colleagues," replied the well-known anatomist, Dumoutier, "and my help would be of little benefit, but for one circumstance. I could, if you desire it, determine from merely examining the skull, what were the peculiar habits, thoughts, passions, vices and virtues by which it was once animated."

The physicians smiled faintly. Dumoutier was one of the earliest and one of the most enthusiastic converts to the then nascent philosophy of Gall and Spurzheim.

Meanwhile the skeleton had been lifted from the earth, and placed on a table in the dining room, which could be entered from the garden. The lime and subjacent earth were also collected, and placed in boxes for the analysis, to which the professional gentlemen now addressed themselves.

They arrived at a unanimous conclusion. They had before them the remains of a female, about four feet, eight inches in height, and of an advanced age. The teeth were singularly perfect for her years and, during life, must have been larger and longer than common. The hands were small, and the perfect nails gave evidence that the deceased had never been accustomed to hard, personal toil. They fixed her age at seventy.

The magistrate's face grew brighter as each successive conclusion was reached. He could scarcely have relished more the gradual unrolling of a rare Egyptian mummy.

"But, gentlemen," he presently remarked, "that is not all. I must now know the date of death."

"That is more difficult," answered De Loury; "a few years since, such a question would have been asked in vain. Now, however, experience supplies us with approximate solutions."

Reasons were then adduced for pronouncing the death to have occurred from ten to twelve years since: that the cause was unquestionably strangulation, the fatal cord remaining laced four times around the neck, and circumstances placing the idea of suicide out of the question; and that (in view of the folding up of the lower members) burial must have followed within a few hours, that is, before rigidity commenced.

The magistrate turned towards the prisoners:

"Well, Bastien and Robert, these gentlemen knew nothing of the matter for which they were invited. Yet in two hours they have drawn a perfect picture of your victim. They have, as it were, made us present at the very crime. There needs but one word more—the victim's name. I add it. The widow Houet."

"And," put in Dumoutier, "I will tell you what the character was of her whose remains lie here, and who was known by that name. She was avaricious, distrustful, timid, and passionate."

He must have been right, for, as if these words had placed the dead before them, the impassible Robert started and recoiled, as if stricken with a sudden fear. The sweat broke from his forehead, his teeth chattered, his moving hands seemed to feel for something on which to lean. Un-

consciously he touched his companion, but instantly started back with horror and disgust and regained his self-command with a strong effort.

“The identity is established; the proofs are complete,” said the magistrate. “Gentlemen, I asked a miracle of you. It is performed.”

In this way public attention was first drawn to a case, the earlier incidents of which had taken place twelve years before.

On September 13th, 1821, the widow Houet, a woman of sixty-eight, disappeared from her residence in the Rue des Maturins. She possessed a fortune of 43,000 francs, and had two children, a son who was almost an idiot, and a daughter who was married to one, Robert, a wine merchant, and an engraver of crystals. To this daughter, M. Lebrun, a brother of Madame Houet, had given a dowry.

From the time of this marriage, bad feeling had existed between Madame Houet and her son-in-law, Robert, and the old lady had been heard to declare that she should one day die by his hands.

At six in the morning, on September 13th, Robert called at the house of his mother-in-law, and invited her to breakfast. She consented. Towards seven, a day servant, Jusson, employed by her, made her appearance, and was scolded for being late. Madame Houet was dressed to go out, seemed agitated, talked to herself, and presently hurried away. She was last seen crossing the Rue de la Harpe, in the direction of a house in that street, inhabited by the Roberts.

Towards eleven, Madame Robert came to inquire for her mother, who had not come to her appointment, but nothing had been heard of her.

The next morning some one called on Robert to inform him of the continued absence of his mother-in-law. He was alone, and replied only: "Do not speak of it to my wife. It will only make her uneasy. I shall not tell her till Sunday."

Two days later, a letter purporting to be from Madame Houet was received by a M. Hérolle, stating that she was about to take a journey, and would be absent some days. Another letter, addressed to a tenant of hers at Versailles, one Vincent, hinted at her intention to commit suicide. Both letters were strongly suspected of being forgeries.

It was suspected that a crime had been committed. But where, when, by whom, and for what purpose?

A perquisition was made in the widow's house, and six notes of 1,000 francs each were found, besides 710 francs in specie. She had not then, it seemed, been murdered for the purpose of robbery.

Suspicion naturally fell on Robert. He had failed in business, and had sold his wine establishment for 1,800 francs which, save for an annuity of 168 francs in his wife's right, was all that remained to him. But there were even stronger grounds for the presumption that he would be a gainer by the death of the old lady. Robert had been noticed by several persons about the hour when she was last seen, watching at the door of his house, as if he expected some one; while, subsequently to her disappearance, he, instead of displaying uneasiness or aiding in inquiry, only sought to conceal it from his wife, and pretended to believe that the misfortune was irreparable.

For the present, justice was at a loss. Presumptions are not proofs. Accordingly, in 1822, the Tribune of First

Instance decided that there was, for the time, no field for further investigation.

Meanwhile, Robert had quitted Paris, and had established himself with his wife at Dannemoine. But in the following year, 1823, he returned, accompanied by a man named Véron, and the two reoccupied an apartment that had always been reserved by Robert in his old house in the Rue de la Harpe. Here scenes occurred which tended to reawaken all the former suspicions.

A person named Bastien, coming one day by appointment to the house, received from Véron, on the part of Robert, a note for 250 francs. Some days later, Bastien called again, demanding a personal interview with Robert. The two were closeted together, and were heard to converse excitedly. Loud and violent exclamations, and hurried steps rather alarmed Véron, who listened, and presently heard a struggle, and the voice of Robert, as if half strangled, crying out: "Thieves! Thieves! Murder!"

Bursting into the room, he found the pair engaged in a deadly struggle, Robert half suffocated, and Bastien pale and menacing.

At sight of Véron, however, they started apart, and Bastien, snatching his hat, slunk away. While the other busied himself in adjusting his disordered clothes, Véron's quick eye detected, lying on the table, a bond for 20,000 francs, apparently awaiting signature, a pen, ready filled, lying beside it.

Urged to place himself under the protection of the law, Robert at once refused, alleging that the quarrel merely concerned losses at play, and was their own private affair; but, when alone with Véron, who seemed to be a gentleman not easily startled at crime, Robert confided to him that

Bastien's exactions were becoming unbearable, and coolly proposed that he should be lured into the house at Versailles, murdered, and buried in the garden!

Concerning this same Bastien, it was known that he had failed in business at Grenoble and, to escape his creditors, came to Paris. Robert being at this time in the wine shop, Bastien frequented the place as a customer and, after the disappearance of Madame Houet, became an intimate friend of Robert.

Not long after the quarrel that Véron witnessed, Robert and Véron returned to Versailles. One day, the former, who had made a visit of a few hours to Paris, came back much excited, and informed Véron that Bastien had, by holding a pistol at his head, compelled him to sign a bond for 30,000 francs.

Again, Véron, who was not fully in the confidence of his friend, urged him to shelter himself under the law; and again Robert, who had his own reasons for keeping as far away from the law as possible, emphatically declined, saying that he preferred flight to the scandal that would be occasioned and, having expressed this virtuous thought, withdrew again to Dannemoine.

Here he remained unmolested until 1827, when his persecutor suddenly pounced upon his retreat and, at the first visit, compelled Robert and his wife to accept twelve bills, amounting in all to 6,000 francs. Robert had been upon the point of changing his residence, and his wife, who had gone before him to prepare their new quarters at Villeneuve-le-Roi, had to be brought back to Germiny to sign the required acceptances.

A stormy interview was overheard by the inn keeper at Germiny.

“*Voyons,*” roared the voice of Bastien, “did I do this business or did I not?”

“Yes, you did,” growled Robert.

“Pay me, then.”

“*Hélas, mon Dieu!* I must,” said the other, gloomily.

Nevertheless, he resisted. It was daybreak, and the acceptances remained unsigned.

Later, Robert sought out the host and, finding him alone, gave him a crown, saying:

“There is a fellow here who wants money that I cannot afford to give him. When you see us together presently, I shall tell him that I have not a sou in the world unless I borrow it. Then you shall lend me this crown.”

The host, however, declined the part assigned him in this little comedy, and even went so far as to reveal the whole matter to Bastien.

“*Ah, c'est comme ça!*” said the latter. “Tell him, then, that there is not a wisp of straw in his house that I cannot take if I choose—nay, if I will, I can turn him out of doors to beg his bread.”

Ultimately, Robert paid the common bill, and the two left the house together.

Scenes of this description had already attracted the attention of the police, and it should be mentioned that, in 1825, on the receipt of an anonymous letter accusing Robert and Bastien of the murder of Madame Houet, a second inquiry had been instituted, the two men being placed under surveillance for a time. But the second inquiry was as fruitless as the first. The absence of the *corps du delit*, in this case represented by the body of the missing woman, paralyzed the arm of justice, and a second decree of *non-lieu* (no ground for further inquiry) was reluctantly issued.

By some means, which have never been explained, Robert managed, for a time, to give Bastien the slip. He retired to Villeneuve, and for five years was left in peace. Then, one fatal day, Bastien knocked at the door. He was tired of rambling about the world, felt himself declining in years, wished to settle down as a quiet country gentleman, and could he find a more suitable home than at Villeneuve, close to his faithful old friend? Meanwhile, he desired to inaugurate the renewal of their intimacy by requiring his friend's signature to a little bond of 40,000 francs!

Then the secret came out in one awful burst.

“Assassin!” thundered Bastien, furious at Robert’s refusal. “Do you wish me to mount the roof of your house, and proclaim to every passer-by that Robert is the murderer of his mother-in-law?”

Without a word, Robert turned and staggered down stairs, with no thought but immediate escape; but, in doing this, he met a friend and neighbor, one Fleury, who had been alarmed by the disturbance. This man proposed at once to summon the police and deliver this *coquin*, Bastien, into custody.

“No, no—for God’s sake!” ejaculated the other and, to the utter astonishment of Fleury, he dashed once more upstairs, from whence he escaped by a garret window into a loft, and so into the fields, while Bastien waited for him beside the street door.

Some weeks elapsed. Bastien had quitted Villeneuve, and Robert, warned by some means of that welcome fact, returned to his house. Here he was shortly after waited upon by a person named Gouvernant, in whom Bastien appeared to have placed great confidence, and who had, at

all events, been given to understand by the latter that he, Bastien, had Robert at his mercy on account of a concealed crime. His mission was to renew the money claim, and his weapons for its enforcement were two slips of paper, the one containing certain names and addresses, the other the plan of a garden, in the corner of which there was traced a cross in red.

At the sight of these credentials Robert turned deadly pale; his knees trembled; he reeled into a chair.

“The villain! The monster!” he exclaimed. “When he has stripped me of everything, who will assure me that he will not take my head also!”

The visitor, finding him utterly prostrate with despair and terror, took his leave for the present, making an appointment, however, to meet him later at a neighboring inn.

Robert, rightly suspecting that Bastien himself intended to take part in the next interview, did not deem it advisable to attend. Upon this, Bastien, losing all self-control, furnished himself with a piece of chalk and, going direct to Robert’s house, wrote upon the street door.

“Robert has murdered his mother-in-law, the widow Houet.”

That night, the Roberts disappeared from Villeneuve-le-Roi. They had fled into Burgundy, passing by Sens, towards Bourbonne-les-Bains.

Raging at this evasion, Bastien now gave himself up wholly to projects of revenge. His judgment blinded by fury, he went at once to the representatives of the murdered woman, and denounced Robert as the author of the mysterious crime. This time justice was able to strike. It was requisite, moreover, to strike at once, the French law forbidding the opening of a fresh inquiry after the lapse of ten

years from the abandonment of the last. Just a few months more, and the murderers, however guilty, would have been beyond the attaint of law.

The first step, much to the amazement of the informer, was directed against his own precious person. A decree commanded the immediate arrest of Bastien. In his pocketbook were found several important papers. Among others, the following memoranda:

June, 1821—M. Robert.

Hired cellar, Rue des Deux-Portes.

Rue de Vaugirard, small house with good fruit garden.

July, 1821—Borrowed 700 francs.

Later, received money to buy spade, pick and watering-can.

Same day—bought (Place de la Grève) half a bushel of lime.

On the back of this memorandum was written:

Plan for the murder of the Widow Houet by the Roberts, for which purpose we have hired the cellar, and afterwards the house, Rue de Vaugirard.

There were found also fragments of letters, one of which contained the following passage:

Unhappy Robert! Is it then decreed that you shall not escape punishment for that crime you have described to the man you have involved in it as “revolting”? Have you forgotten the Rue de Vaugirard, and the spot where your victim lies? Never. Believe that all is safe! Time and the remains (*débris*) still exist, un-destroyed.

Another letter or note contained:

You and your wife—you are the murderers! Have you forgotten the cellar and the Rue de Vaugirard, and the disappearance of your mother-in-law, the 13th September, 1821? Do you fancy your crime is expiated? Man, your foot is on the scaffold! Your idiot brother-in-law will enjoy the money. For you there is only remorse.

Attached was a plan of the garden in the Rue de Vaugirard, which included the red cross that has already been described. The last paper was especially enlightening.

The Court has decreed that, as regards Bastien, there is *non-lieu* (no ground for process), and as regards Robert *non-lieu quant à présent*. This decision is final for Bastien, according to the legal maxim, *Non bis in idem*. Not so for Robert. Even were Bastien to own himself guilty, he cannot again be prosecuted. The judgment is irrevocable!

This last explains the man's audacity. He believed that his own safety was as much assured as was Robert's destruction. A little learning was fatal to Bastien.

The new process was opened on April 12th, 1833. It was proved that the house and garden had, in effect, been hired by Bastien of a Madame Blanchard, from July, 1821, Bastien alleging that he wished to settle in Paris to supervise the education of his children.

One of his first acts had been to dismiss the gardener who had been attached to the place. No progress seemed to have been made in furnishing the house, and this circumstance, coupled with others of a doubtful character, such as strange, nocturnal visitors, lights in the garden and, finally, the apparent absence of everybody, awakened the suspicions of Madame Blanchard. Obtaining the aid of the police, she opened the doors and examined the premises, but

without making any discovery. The next day, Bastien, made aware of the perquisition, returned Madame Blanchard the keys and, paying a second quarter in advance, announced that his wife had changed her mind, and had abandoned the idea of a residence in Paris.

While the new inquiry was progressing, the Roberts had been arrested, the papers found on Bastien clearly implicating the woman in the crime, while they indicated at the same time an adulterous connection with her. She was, however, subsequently released on a decree of *non-lieu*.

The case came to hearing on the 12th of August, 1833, before the Assize Court of the Seine, presided over by M. Hardouin. An immense crowd filled the court and its approaches, and those who had obtained entrance gazed with awe and interest on the now famous skeleton which, prepared by Dumoutier, lay upon the table in the center of the court, and formed the first terrible witness of the crime which was about to be revealed.

Bastien was dressed in a light blue coat, his eyes concealed by his immense green spectacles. He appeared by turns, sullen and restless. Robert was plainly dressed. His gray eyes were constantly fixed on one point beside the judge, and he seemed quite unaware of the presence of those around him, replying to the questions which were put to him in a low, confused voice. His age appeared to be about sixty-four. Bastien was fifty-one.

Bastien was interrogated first. In his answers he admitted having learned the disappearance of Madame Houet very soon after it had occurred, and had received at various times considerable sums of money from Robert, whom he suspected of having caused it.

It was evident that his line of defense would be that

he had detected, and profited by, a crime, although he had had no actual part in its commission.

He had been intimate with Robert and, at the latter's request, had hired a cellar in the Rue des Deux-Portes, and also a house and garden in the Rue de Vaugirard, in which to conceal contraband liquors.

Had he not, in March, 1823, compelled Robert to sign a bond for 30,000 francs? He had.

In October, 1823, had he not written to Véron a letter containing threats against Robert, and declaring that the latter should give him whatever sums he chose to demand? Possibly. He had received many sums from Robert, varying from 10 francs to 17,000, and all on the same ground, hush-money.

**PRESIDENT.**—I will now tell you, Bastien, what has emboldened you to bring this charge against Robert thus openly—a thing you dared not do in 1823. You have been told by one Gouvernant that you have no longer anything to fear, being placed beyond the grasp of justice by the decree of *non-lieu*. I have to warn you that this is an error.

**BASTIEN.**—When I said I had nothing to fear, I meant that I had nothing to accuse myself of.

**PRESIDENT.**—Robert told you that he wanted the house in the Rue de Vaugirard for smuggling purposes, by which he hoped to make large profits, wherein you would doubtless expect to participate. Well, the house remained unused. There was no sign of clandestine commerce—not a single bottle of wine. Yet, you made no comment. Your companion not persisting in the fraud you speak of, why did he conceal his name behind yours?—No answer.

**PRESIDENT.**—You bought a spade and pick-ax. For what purpose? The gardener must have possessed such tools.—He had been dismissed.

You purchased lime. For what purpose?—Robert told me it was to clean the kitchen.

It was here shown from Bastien's notes that these purchases had been made immediately after the tenancy had commenced, and that the gardener was only dismissed a month later.

A chemist then proved that the quantity of lime covering the body amounted to two decalitres, exactly half a bushel, the precise amount mentioned in Bastien's notes.

PRESIDENT.—Bastien, this skeleton was found in a spot in the garden exactly corresponding with the red cross on your plan. It is that of the widow Houet. Now, you have stated that she was strangled, and the cord around her neck confirms it. How came you so well informed?—Suspecting his secret, I one day said to him bluntly, “Tell me, unhappy wretch, is it not true that you are a murderer? The soil here has been lately disturbed. What sort of seed have you planted here?” Throwing himself on his knees, he answered, “Monsieur Bastien, have pity on me! I will give you whatever you ask. All I have is at your command.” That is all that passed. I had the power to take his money and, *ma foi*, I used it.

How did you know the deceased was strangled?—Robert told me everything.

In one of your disputes with Robert, you were heard to say, “This is dangerous talk. It will cost three heads.” What did you mean by that?—I meant his head, and—and his wife's—perhaps my own also, for I should have blown out Robert's brains and then my own.

A doubtful explanation. Why, at the inquiry in 1824, did you not reveal this?—It was against my interests. Robert was my *vache à lait* (milch cow).

The interrogation of Robert was commenced. The accused retained his downcast demeanor, and kept his eyes on the ground.

**PRESIDENT.**—Robert, you were on bad terms with your mother-in-law. She at one time forbade your visits; while, on the other hand, you complained of her extravagant habits, saying that she persisted in speculating in lotteries, and would have nothing to leave you and your wife at her death.—I could not have said so, knowing nothing on the subject.

She lent you various sums?—About 10,000 francs in all—no more. I never asked her for a penny.

Speak louder, if you please.—My voice is naturally weak.

Do you believe that your mother-in-law was murdered?—I neither know nor believe it.

You had an interest in her death. At that period you were a ruined man.—I have never been ruined. I sold my business for 1800 francs, and I had goods to the value of 3000 more.

By your mother-in-law's will, you have only recently come into possession of what you expected. Meantime, your income has not exceeded 1500 francs. In this condition you actually signed a bond to Bastien for 20,000 francs. Why?—I will explain the whole. I desired to place what money I had left in a certain manufactory. It was not sufficient. Walking one day with Bastien in the Palais Royal, he observed to me that if we could raise a little money we could do a very good stroke of business. Presently we met a gentleman, then two others, to all of whom Bastien spoke. Then he said to me, “One of these men will give us 6000 francs; another 3000. This looks well for the manufactory.” It was now late and I wished to go home. Bastien detained me, saying it was not late. “It is ten o'clock,” said I. “I bet it is nothing of the kind,” said he. “I accept it,” was my answer. “Five hundred—ten thousand francs!” he shouted. “Twenty thousand!” I replied, thinking the whole a jest. It turned out that I was wrong and, because I would

not pay 20,000 francs, he called me a rascal and a cheat. Next day he came and demanded a bond for that sum. I refused. "Beware," he said, "this will cost three lives." I ran from him. He followed, calling out that he would put up with the wrong—that he had behaved badly. But he had bought some wood and had not the means to pay for it. How much did he need, I asked. "Three thousand francs." I gave it and, later, 4000 more. And that ended the affair.

One hardly pays such sums for a bet of such a kind!—Monsieur, to judge of that, one must know the people.

Attend, Robert. It seems more probable that you incited some one to this crime than that you committed it yourself.—Ah, monsieur—impossible!

Of what, then, were you afraid?—Of all these people—Bastien, Gouvernant, Véron, believing them to belong to the band of Vidocq (the famous police agent who had started life as a criminal).

BASTIEN.—I deny it altogether.

PRESIDENT.—Did you, Robert, send money to Bastien in prison?—Never, monsieur.

PRESIDENT.—Bastien, what say you?—He sent ten, twenty, and sometimes a hundred francs at a time.

At this answer of his co-accused, Robert entered into a long and confused explanation, made still more unintelligible by his weak voice, at the close of which witnesses were called.

A laundress, Esprit, deposed that she had heard Madame Houet declare that she would die by the hand of her son-in-law. After the disappearance, Robert came to the house as if to make inquiries. Witness had replied to him bluntly that he knew more about it than she did, and would do better to follow up the inquiry without seeking to inculpate his



THE SCOPES TRIAL AT DAYTON, TENNESSEE. A COURT ROOM SCENE  
SHOWING WILLIAM JENNINGS BRYAN



idiot brother-in-law. To this, Robert responded, "You suspect me?"

"As I was about to answer," continued the witness, "he hastily begged me to speak lower, which I, having no cause to fear being overheard, refused to do." On this, Robert had hastened away.

Chenevaux, a porter, testified that within a few days of the disappearance, Robert came to his lodge, and observed, "If you are ever summoned, you will be able to bear witness that I was at home."

Madame Lecoq had seen Robert watching at his own house door on the day of the disappearance. When reminded of this, the accused had remarked to the witness, "My little neighbor, this misfortune happened that very day we had that pleasant chat together. You remember? So that if they should question you about me, you will be able to say that you saw me at work in the coal yard." "But," added the witness, "I could not say that, for I was uneasy at Robert's strange manner, and went away on the pretence of taking my husband his dinner."

PRESIDENT.—These are singular precautions, Robert.

ROBERT.—It is possible, but I remember nothing of the sort.

At this point in the inquiry, the medical experts came forward, and were requested to uncover the skeleton. As the white sheet and green veil that covered the object were slowly withdrawn, revealing the remains of the murdered woman, with the bones and even the cartilages completely displayed, a lively agitation was felt in the packed court room. The two accused men, however, remained unaffected.

PRESIDENT.—Accused, look on these remains. Do you recognize them?

BASTIEN.—We have seen them.

Robert turned away his head and was silent. The doctors repeated the description already given, adding that the deceased had been murdered by strangulation, but without suspension.

Véron, Robert's friend in 1823, then told of the quarrel between the latter and Bastien.

“You owe me 20,000 francs,” said Bastien, “pay me, or if not—!” When Robert and the witness went out together, Robert said, “I am a wretched man. Are you my friend? If you are, assist me now. We will make an appointment with Bastien in the Rue de Montreuil, kill the fellow, and bury him in the garden.” “But,” replied the witness, “we are necessary to our families. Such an act would never pass unpunished.” Shortly after this, Bastien came to the witness and said, “Are you aware that Robert has murdered his mother-in-law?” Such a communication, coupled with Robert's refusal to appeal to the protection of the police appeared to the witness *assez drôle* (odd enough).

PRESIDENT.—In spite of this *assez drôle* proposal of murder, you remained on friendly terms with Robert?—I merely continued to work with him as before.

Noquet, a mason, stated that, being employed in the house at Versailles once belonging to the deceased and now her daughter's, Bastien came in and, inviting him to drink, questioned him concerning the widow's property. The witness told him that Robert had inherited a portion. “Ah!” said Bastien, “I thought he took the whole.” At that moment Robert appeared. He and Bastien had a fierce quar-

rel on the spot. The police were called in; the case was heard; and both men declared that their dispute merely concerned a bit. They were discharged. Leboeuf, another witness of this quarrel, gave the dialogue more exactly.

ROBERT.—I owe you nothing, I tell you.

BASTIEN.—Liar and cheat!

WITNESS.—Come, come, my children, what does all this mean?

BASTIEN.—That this fellow is a rascal.

WITNESS.—Bon! V'la du mic-mac.

ROBERT.—It is as much as life is worth to have anything to do with a man like this!

WITNESS.—One doesn't risk one's life on such a squabble as this. What are your dealings with the citizen?

BASTIEN.—Take care, Robert. Three heads are in danger!

“I knew that mine was all right,” concluded the witness slowly, distinctly, “and I said”:

Tiens! The business is that you have bribed this man to murder your mother-in-law. A child might see that!

Masson, a master mason, stated that at this point in the quarrel he had interposed, saying, “Well, well, *pere* Robert, come and eat a cutlet. This man means to kill you and himself, also. Nevertheless, a cutlet first!” As they were eating, Robert dropped his napkin. The witness picked it up, and called Robert's attention to the fact that it was not really a napkin but, actually, a part of a chemise that had belonged to the dead woman. “Ah, *laissez donc ça!*” exclaimed Robert, much agitated. “Do not disinter the dead!”

One Diensin, deposed that he had lodged for some time with Gouvernant, whom Bastien visited. One day Gouvernant took him aside, and said, pointing to Bastien, “You

see that big fellow there? He was accused of a well-known murder. *Ah, diable! il s'en a ensauve.*" (He has scraped through it.) They could not bring it home. He's a lucky one—*ce gaillard la!*"

The examination of Gouvernant, the man so often referred to by the other witnesses, created much interest. This worthy, who called himself by the elastic title of "agent," was at present a convict. Though disqualified by law from giving testimony on oath, he was admitted as a witness without it, his evidence being taken for what it was worth.

Speaking with much assurance, he stated that he had been on intimate terms with both the "messieurs" accused. "One day," he continued, "Bastien came to me and said, 'I know all about the widow Houet, and the author of it. They are searching in the garden. So long as they keep away from the spot, I shall be silent, for I hold a bond of 17,000 francs on Robert, and that would become worthless. But if they *burn*, I will confess all.'" Bastien was very anxious and uneasy during the researches. "I lost sight of both messieurs," continued the witness, "until 1827, when I fell in with Bastien. He told me things were going badly with him, and related his adventures in pursuit of Robert, who had absconded, but whom he had now traced to Ville-neuve-le-Roi. He then proposed to me to visit Robert, and try to extort something from him. I consented, on condition that he (Bastien) should not himself enter the town, because everybody, children and all, would run after him, calling out, 'Here's Robert's man! Robert's man's come!'

"He then gave me, as credentials, a plan of the garden, having a red cross in one part, which he made with a drop of rabbit's blood.

“I went to Robert, and asked:

“‘Are you the murderer, or are you not? Yes or no?’

“‘I don’t know what you mean.’

“‘Well, then, I’ll tell you.’ So saying, I placed the garden plan before him. ‘Now tell me, have you murdered the Widow Houet or not?’

“‘What do you require of me?’ he asked. ‘This Bastien is such a miscreant, that when he has got all I possess, he is as likely as not to take my life.’

“‘Don’t fear that. When he has got all that he can, he’ll leave you alone.’

“‘Give me an hour to consider it.’

“When we left the house, we found a crowd assembled, Bastien in the midst, crying out, ‘Robert is a murderer!’

“‘How!’ shouted the crowd, ‘Robert! A householder! A *rentier*! A man who plays at bowls! A man of substance! *C'est-il possible!*’

“‘Well?’ cried Bastien, seeing me.

“‘He has asked for an hour?’

“‘Ah! An hour! I understand. See here!’

“It was then that he went and wrote on the house door:

“‘*Robert murdered his mother-in-law, September 13th, 1821.*’

“Some days after this, Bastien came to me and said, ‘How does this matter stand? The decree of *non-lieu* was only conditional as regards him; for me it is final—eh?’

“I give it as my opinion that they could still prosecute him, but only upon fresh testimony.

“Bastien seemed to consider that he had nothing to fear, but I warned him more than once that in implicating Robert he might seriously compromise himself.

“ ‘I am inclined,’ said he, ‘to denounce him to the widow’s representatives, and claim a reward.’

“ ‘How will that help you? If the wife is declared innocent, you will get nothing from them.’

“ ‘She is guilty—as guilty as her husband. I could procure the condemnation of both as easily as I could drink a glass of wine.’

“ ‘Perhaps,’ I objected, ‘the body is decomposed, bones and all, by this time.’

“ ‘In that case,’ returned Bastien, ‘I engage to find at least a wedding-ring.’ ”

PRESIDENT.—Bastien, how did you know there would be a ring? According to you, Robert never told you.

BASTIEN.—He must have done so. Besides, one might guess that a woman wore a ring.

The witness, Gouvernant, continued, and alleged that Bastien had declared that the woman had been strangled.

PRESIDENT.—Explain this, Bastien.

BASTIEN.—Robert told me. He said he had strangled his mother-in-law, and had buried her on the spot.

PRESIDENT.—Who prepared the grave?

BASTIEN.—He himself, the night before.

ROBERT (*interposing*).—It is all false, I swear. There is an understanding between the witnesses. Gouvernant is an agent of the police, first class. Bastien is an agent of Vidocq. Give me ten minutes, and I will explain everything.

GOUVERNANT.—This monsieur calls me *mouchard* (police spy). He takes every one that approaches him for a *gendarme* or a spy.

PRESIDENT.—With respect to the ring?

The witness, Diensin, already examined, deposed that

Gouvernant told him that Bastien wore on his little finger the ring of the murdered woman.

This exhausted the list of witnesses.

Robert, who had manifested great impatience to be heard, now commenced his defense. This consisted of a rather more minute than interesting narrative of his early life, from which it appeared that he had been a man so devoted to honest labor, that he frequently painted, glazed and plumbed for sheer love of humanity, "*Faites excuse*," said Robert, checking himself at this point, "I once accepted a bottle of wine, and in vintage time I . . . ?"

Recalled by the President to the case at issue, Robert proposed to favor the Court with a few details concerning his early disputes with his mother-in-law. These, however, the President pronounced irrelevant to the process, and Robert sat down, apparently not badly satisfied with the impression he had made.

The Court now announced its intention to leave to the jury this question: Had Robert, by gifts or promises, procured the murder of the deceased Widow Houet?

"*Incapable, mon cher Monsieur*," said Robert. "Incapable of anything of the kind! I am not a man to say one thing and to mean another."

The Advocate-General Bayeux summed up the evidence in a speech that, neither in its eloquence nor its lucidity, would repay the reproduction. This case was, however, too clear to be injured by any shortcomings of its advocate. Both of the accused were included in the denunciation, and their conviction was confidently demanded.

The counsel for the defense did their best to shift the weight of guilt from one prisoner to the other, after which

the President charged the jury, who retired, and remained in deliberation for the next two and a half hours.

On reappearing, their verdict established the fact of murder. Bastien was pronounced guilty of the actual crime, with premeditation. Robert was found guilty of having incited or procured the murder, but was acquitted of participation in it.

To the profound astonishment of every one, including the Court, extenuating circumstances were admitted!

The prisoners were brought in. Bastien was calm. Robert's face betrayed acute anxiety and, on hearing his comparative acquittal, he staggered and would have fallen, but for a bystander. Both were sentenced to exposure on a scaffold, and *travaux forcés* (hard labor) for life.

At the moment of passing sentence, Bastien had made a slight movement, but without the slightest change of feature. However, on being taken back to his cell, he turned suddenly pale and sank back on the bed. On examination, his hand was found covered with blood, and convulsively clutching a pair of scissors, with which he had stabbed himself in the left breast. Unfortunately for him, the wound was light.

The two convicts appealed, but their appeal was rejected and, on November 26th, they underwent exposure in the Square before the Palais de Justice. The great crowd around them uttered ferocious cries and jests: "Down with the murderers! To the guillotine with them! Monsters who have cheated the sack!"

Public opinion sometimes corrects the decision of an enlightened jury.

MURDER—?



## MURDER—?

*The Trial of the Hon. Daniel E. Sickles for the Murder of Philip Barton Key, Esq.*

*Before the Criminal Court of Washington, D. C., on the 4th of April, 1859.*

ON the afternoon of Sunday, February 27th, 1859, official and fashionable Washington was thrown into a furor by the news that the Hon. Daniel E. Sickles, Member of Congress from the Third District of New York, had shot and killed Philip Barton Key, Esq., United States District Attorney. The shooting had taken place in the open street, and the cause was said to be the discovery by Mr. Sickles of a liaison between his wife and Mr. Key. Fashionable Washington smiled grimly. It had wondered how long it would be before the Hon. Daniel E. Sickles woke up.

The actors in the drama were distinguished, and two of them, Mr. and Mrs. Sickles, were as well known in New York as in Washington.

Daniel E. Sickles was a native of New York. Originally a printer, a change in his circumstances had enabled him to realize his ambition and, after a thorough academic education, he had entered the profession of law. He studied with the Hon. Benjamin F. Butler and finally, in his own turn, became a prominent member of the New York bar. Then came politics—Sickles was a Democrat—and a seat in the State Senate. In 1852, Mr. Sickles married a Miss Bagioli, the daughter of a New York composer and music

teacher. The groom was twenty-seven; the bride was sixteen. Still, Sickles had watched her grow from childhood, though she was little more than a child when she married, and had always idolized her. Shortly after the marriage, Mr. Sickles was appointed Secretary of the American Legation at London, in the household of Mr. Buchanan, and their popularity in England—in which the gay loveliness of the bride played no small part—along with Mr. Sickles' professional success, showed them that the world lay before them. After their return to America, the Sickles lived for some time at Bloomingdale, now upper New York, in a charming house overlooking the Hudson and, on his election to Congress, Mr. Sickles rented a house on President's Square, Washington.

At the time of the tragedy, Daniel E. Sickles is described as a man of "good presence and graceful manners; form, not stout, but well knit together; complexion fair; eyes, blue and expressive; mouth firm, and his general bearing thoroughly indicative of the unflinching determination which has characterized his whole career." Mrs. Sickles was said to be wholly charming—she was only twenty-three—with the distinctive type of beauty that was an inheritance from her Italian ancestors. The Sickles had one child, a daughter of five years.

Philip Barton Key was a no less interesting person, connected with some of the best and oldest families in Maryland. It is told of his grandfather and granduncle, John Ross Key and Philip Barton Key, that during the Revolutionary War they were put under the control of one, Dr. Scott. The Doctor was a wily Scotsman and, not knowing how the struggle was to end, but anxious, in any event, to have a friend on the winning side, he obtained for one a

commission in the British army, and for the other a commission in the American forces. Both Keys faithfully served their separate sides until the conclusion of the war when Philip Barton Key, the British officer, returned to the United States, commenced the study of law and, in due time, became a Member of Congress. The other brother, John Ross Key, married a daughter of Governor Lloyd of Virginia, and retired to his estate. The result of this marriage was a son, Francis Scott Key, author of "The Star Spangled Banner," and father of Philip Barton Key, the victim of the shooting.

In 1859, Philip Barton Key was about forty-two years old. A contemporary description shows him as "six feet in height and, without being more than ordinarily prepossessing in appearance, his fine figure, fashionable air, and agreeable address rendered him exceedingly popular among the gentler sex. Owing to a heart disease from which he suffered for two years, his face had assumed a sickly hue, and latterly he had become peevish, discontented and fretful; but those who knew him best said that these eccentricities of manner covered a kind and generous heart. He was a widower, and leaves four children to mourn over the sudden and violent termination of a life whose future was bright with the promise of honor and reward." It is a strange picture of a lover, this discontented, peevish man of forty-two, but Key had a reputation for gallantry and, certainly, as his early biographer says, he was "exceedingly popular among the gentler sex."

In several later accounts of this affair, I find it said that Mr. Sickles brought Mr. Key to his house, and especially asked Mrs. Sickles to make much of him in order to help him, Sickles, in his professional career. I cannot trace this in the contemporary reports or in the evidence of the trial,

and I very much doubt its accuracy. There seems to have been nothing, in a professional way, that Key could do for Sickles, and their relationship appears to have been that of quite ordinary friendliness. Socially, the two families moved in the same circle and, as the Sickles did at least a moderate amount of entertaining, Key was often seen at their house. It was not long, however, before it was noticed, though not by Mr. Sickles, that Mr. Key's visits to the house on President's Square were more and more frequent, and that, now, they usually took place when the master of the house was absent at the Capitol.

A contemporary commentator remarks that, "On the re-assembling of Congress, Mr. Key became more attentive than ever; and scarcely a day passed after the return of Mrs. Sickles to Washington, on which his tall figure, his white riding cap, well trimmed mustache, and iron gray horse, might not have been seen, after the departure of Mr. Sickles for the Capitol, two or three times in the course of a morning, on the circuit of the President's Square, or at the door of her house.

"Until Friday, the 25th inst., nothing had occurred to Mr. Sickles to make the matter of his wife's relations with Mr. Key more than ordinarily prominent in his mind. So far was he, indeed, from manifesting anything like suspicion, that on Wednesday Mr. Key escorted Mrs. S. on Pennsylvania Avenue and, on Thursday evening, as was their custom every fortnight, Mr. and Mrs. Sickles entertained a large party at dinner. On these occasions Mr. Key, and his brother-in-law and sister, the Hon. George H. Pendleton and lady, were, however, present. On the following day (Friday), Mr. Sickles received an anonymous letter, stating that his wife was in the habit of meeting Mr. P.

Barton Key at a house on Fifteenth Street, in the negro neighborhood. Through a friend, he ascertained that Mr. Kay had rented a house in that vicinity, and was in the habit of there meeting a lady, whose dress and appearance corresponded with that of Mrs. Sickles.

“Possessed of these facts, Mr. S., on Saturday evening, confronted his wife with his terrible suspicion. At first, she strongly denied her guilt; but when asked by her husband whether on the previous Wednesday afternoon she had not entered the house on Fifteenth Street in a certain particular dress, she was overcome by her feelings and, exclaiming, ‘I am betrayed, and lost!’, swooned away. On recovering her senses she made a full confession of her guilt in writing, from which it appeared that the criminal intercourse had been going on since May, 1858, sometimes under the roof of her husband, and at other times at the rendezvous above named.

“It is not our place to describe the harrowing scene which must have ensued between the injured husband and the recreant wife, but it is easy to imagine the desperation of a man already almost frenzied, on seeing the cause of his misery pass opposite the window of his wife’s room, as did Key on the following day (Sunday), and with gay audacity wave his handkerchief—the usual signal for an assignation.

“Mr. S. F. Butterworth of New York, an intimate friend of Mr. Sickles, having been sent for, was in the house at this time, but after some considerable conversation on the subject, left the premises and proceeded towards the avenue. He had not gone far before he encountered Mr. Key, with whom he exchanged the usual salutations of the day, and then turned to leave him, but had walked only a short distance, when he heard Mr. Sickles, who in the meantime had

advanced upon them from the direction of his residence, exclaim in a loud voice, 'Key, you scoundrel, you have dishonored my home. You must die!'

"Key instantly raised his hand to his breast as if to grasp a weapon, when Sickles drew a pistol from a pocket in the skirt of his overcoat, behind, and fired. The shot took effect in the groin. Key then grappled with Mr. S., but after a momentary struggle they became disengaged, and the former retreated backward up Sixteenth Street; Mr. Sickles followed, and when within ten feet, fired the second shot, which passed through Key's body below the heart. At the third fire, the weapon being close to Key, the ball struck near the second wound, and slanted off; he then fell.

"Mr. Sickles then desisted from firing and, in company with Mr. Butterworth, proceeded to the office of Attorney General Black, where he delivered himself into custody with the request that a magistrate should be sent for, and such disposition made of him as might be thought proper. Soon after, Mr. Sickles, accompanied by a number of friends, was conveyed in a carriage to the jail.

"On the departure of Mr. S. from the scene of the affray, the body of Key was removed to the parlor of the Club House, but he was beyond all medical skill. A few faint gasps and the tragedy was complete. A coroner's inquest being held where the body lay, a verdict was rendered in accordance with the above-mentioned facts."

Before proceeding to the actual trial, it will be enlightening to comment briefly on this statement, which is fairly, but not entirely, accurate. In the first place, President's Square, directly across from the White House, is now Lafayette Square; and the Club House can be no other than the Cosmos Club, still the best known club in Washington. Next, the

rather curious conduct of Mr. Butterworth calls for remark. Did he go out of the Sickles' house to detain Key or to warn him? Probably, the first, yet he seems merely to have passed the time of day and gone on. Pictures of the period show the gentleman from New York leaning gracefully against the iron railings while the shooting was going on, and the State tried their best to have him indicted as accomplice. Finally, what was the significance of Key's gesture towards his breast when Sickles accused him? He was actually unarmed, but he was in the habit of carrying a weapon and, doubtless, he thought he had it with him on this occasion. It must have been a terrible moment when he raised his hand to his pocket, and found nothing there. The statement I have quoted says nothing about the opera glass that Key threw at Sickles in a futile attempt at defense, but that, and other points, will be brought out in the testimony as given at the trial.

The Criminal Court being in session on the Monday following the murder, Mr. Sickles waived a preliminary examination before a committing magistrate, and insisted on waiting until the Grand Jury should investigate the circumstances. He probably hoped, then, that he would not even be indicted. On the following Thursday, however, the Grand Jury examined the facts thoroughly and forthwith returned an indictment for murder. The trial was set for Monday, April 4th.

The trial opened on the day set before Judge T. H. Crawford and, at eleven o'clock, the accused appeared conducting himself, so it is said, with "ease and dignity." Popular opinion was enormously on the side of Sickles. Indeed, he was by way of being the hero of the hour, and this atmosphere was manifest from the start. The State was repre-

sented by Robert Ould, Esq., the United States District Attorney, and by his associate, J. M. Carlisle. The defense had called a most impressive body of legal talent to its cause. There were James T. Brady and John Graham of New York; E. H. Staunton of Washington; Messrs. Ratcliffe, Clinton and Magruder of Washington, and the Hon. Mr. Phillips, late of Alabama. It was clear that the defense was out to get a run for its money.

The long, detailed indictment charged willful murder, to which the defense responded Not Guilty.

From the outset there was the typical American trouble in getting a jury. For a week Washington had been agog, from the highest to the lowest, with the Sickles-Key affair, and to expect to get a jury composed of men who had no opinion on the matter was to ask for morons. Finally, the court took the business more or less in hand, and even then, progress was slow enough. Further, the prosecution claimed, truthfully but foolishly, for it made them appear as obstructionists, that under the laws of the District each juror must be worth not less than \$800. Here was more trouble. The defense denied the fact, thus appearing in a generous light, to the gratification of prospective jurors. The wrangle, the first of many, continued for most of the first two days of the trial. On the first day, the panel of thirty talesmen was exhausted, and seventy-five were called for the next day. On the second day, Bagioli, the father-in-law of Mr. Sickles, the music master of Fourteenth Street, was among the spectators, as was also Mr. Sidney Webster, Secretary to the President, and other notables. By the end of this day eight jurors had been accepted by both sides. The jury was finally complete at the close of the third day. It was composed of two farmers, one merchant, one haber-

dasher, one shoemaker, one tinsmith, four grocers, one coachman and one cabinet maker. A representative and democratic assembly, with the grocers in the majority.

On the fourth day, District Attorney Ould opened for the prosecution in a comparatively short speech that was at once rational and lacking in rhetorical fireworks. It was a speech for the court, but not for the grocers and farmers. Next, witnesses were called to prove the fact of murder. There were a number of eye-witnesses to the shooting, but the account given by the third witness, Edward Delafield, Jr., was, on the whole, the clearest and most complete. Mr. Delafield testified that:

I was present at the time and place of the death of Mr. Key. I was coming down Pennsylvania Avenue towards Madison Street about two o'clock P.M., and when opposite the small gate near the President's house, on the south side, I saw Mr. Sickles coming down the street on the Club House side, a little this side of the Club House. I did not take particular notice, but I saw him address a gentleman on the corner. I continued to walk towards Madison Place. I heard the report of a pistol, and then saw both the gentlemen in Madison Street near the crossing. The shot did not seem to take effect on Key, for he ran, and said, "Don't shoot! Don't shoot me! Don't murder me!" After that, he got behind the second tree from the corner. Sickles followed him up, and as he got up to Key, he caught Sickles by the hand. I think it was the right hand. Sickles threw him off and fired. This shot seemed to take effect. As he was lying on the pavement on his right arm, Sickles approached him and put the pistol to his breast, and fired. Key fell over as though dead. Sickles then cocked the pistol and put it near the head of Key, and pulled the trigger. The cap missed. Two gentlemen were running from the Club House. Sickles seemed to be putting on a new cap. One of the two gentlemen took

him by the hand, when Sickles seemed to order him off. He then fired a third time. Mr. Sickles then joined a gentleman, and walked away up Madison Place. The whole affair occupied about a minute and a half or two minutes from the time when my attention was first directed to the firing. My position was two or three feet this side of the small gate in the President's grounds, and nearly opposite the upper corner, or the corner nearest Georgetown on Madison Street. I did not know Mr. Sickles personally, although he had been pointed out. I cannot say how he was dressed. I stood still after the first fire, till they took the body toward the Club House, when I crossed over. I did not notice Mr. Sickles before the firing any more than to simply say to myself, "There goes Dan Sickles." I did not observe any gentleman standing at the corner before Sickles approached him, and did not know who it was.

Mr. Delafield's account seems to cover the facts very accurately. A short cross-examination did nothing to shake his story, and the various other witnesses added nothing of importance. Some had seen the shooting from the street; one from the window of his house; and others had run out from the Club before Sickles had finished his work. It is interesting that in all this testimony by eye-witnesses there should be such general agreement as to details. It is proverbial that no two eye-witnesses see the same thing in the same way and yet most of the six or eight men who saw Sickles kill Key differed in their testimony hardly at all and in no essential points. Not every one seems to have seen Mr. Butterworth, who was certainly standing close by, but he was a stranger and so was the more likely to be passed over.

The Coroner's evidence was routine. Key had been shot to death by a large bore pistol, and any one of several wounds he carried was quite enough to finish him. The

Coroner produced "a Derringer pistol, stocked to the muzzle, plated, and about seven inches long, with a wide, rifle bore. Ramrod absent." This had been picked up near the fray, and the prosecution tried to offer it in evidence as having been the weapon used. The point was contested. If it was used, Sickles must have taken time to reload after his last shot. No testimony was given as to the Derringer having been recently fired.

A Mr. Pendleton was then called to the stand as a witness of the shooting. His only addition to the testimony already given was that after the first shot, Key threw something at Sickles, striking him in the breast. The object thrown was then identified as a small opera glass, the empty case of which was found in Key's pocket. It is difficult to see just what this proved, except that Key tried to defend himself and, circumstantially, that he was not armed.

Further medical testimony was introduced through the doctor who examined Mr. Key after he had been taken into the Club House, but nothing new was brought out. The ball that was extracted from the body was offered, and was tried in the Derringer, but it was much too large. Mr. Brady, for the defense, protested against the Derringer being offered in evidence, saying that all witnesses were agreed that Mr. Sickles had used a revolver. The defense made no attempt to deny the fact of the killing, but protested against the Derringer being produced as "the implement of death." The Court decided that this matter was for the jury, and, therewith, the prosecution closed its evidence in chief.

Now came a long and bitter fight between counsel for the defense and prosecution as to the calling of Mr. Butterworth. Neither side wanted to call him, because each wanted the privilege of cross-examining. The defense did its best

to force the issue, but the court sustained the prosecution, and Mr. Butterworth of New York was permitted to hold his peace. This closed the fifth day of the trial. The bare fact of the murder—which was admitted by the defendant—was established, and that was all.

The next morning the court was full, for all Washington knew that, with the opening of the defense, the really spectacular testimony would begin. It did.

The defense had two arrows to its bow, the same two arrows that are almost invariably used in like instances to-day. First, the murder was justifiable, by reason of the fact that Key had seduced Mrs. Sickles. Second, justifiable or not, Sickles was insane with grief when he did the shooting. It was for Mr. Graham to take advantage of this magnificent opportunity for forensic oratory, and it cannot be doubted that he did his best. His speech lasted all of one day, and well into the next; and was so admired by the country at large and Washington in particular that it was reprinted as a separate pamphlet and widely sold.

Mr. Graham began with a few opening flourishes regarding the marriage-bed, Desdemona, the humble family altar, and the imperfect legal system that did not provide an adequate punishment for adultery. (At the time of the trial, adultery was not an offense, according to the common law of Maryland, which was used in the District of Columbia. Indeed, it was a legal offense in only four States, the penalty varying from two to four years.) Mr. Graham did not quite go so far as to say that the penalty for adultery should be death, but he conveyed that impression very successfully. Having reached this point, the speaker became beautifully irrelevant and rhetorical. Starting with the Garden of Eden, and the well known triangle there, Mr. Graham grad-

ually worked his way up through the flood, hardly skipping a single instance of marital infidelity in the entire Bible, and ended with a burst of eloquence in the Epistle of Paul to the Romans. It was a very fine effort, and was duly appreciated. Mr. Graham must have felt repaid by the applause that greeted his conclusion, and one is sure that his brother lawyers envied him heartily his chance of putting morality on a legal basis.

After Mr. Graham's speech various witnesses were called to testify to the friendly relations between Key and Sickles. As I have said, these relations were, on the surface, normal enough. The two families moved in the same circle and saw each other frequently. The liaison between Key and Mrs. Sickles was unsuspected by the husband, in spite of the utter lack of discretion displayed by the lovers. There is no indication that Key sought out Sickles or that Sickles played up to Key. The defense now unmasked some of its heavy artillery in the testimony of Mr. Robert J. Walker. The "unwritten law" was not of much use to them, unless they could establish the insanity plea, and this they proceeded to do forthwith. Mr. Walker's testimony relates to the time that intervened between the shooting and Sickles' arrest. Mr. Walker testified:

I have resided in the District many years. I was in the city on Sunday, the 27th of February. I had known Mr. Sickles several years, but had not seen him for six or eight months prior to that date. It was either three or twenty minutes after three o'clock I saw him in his own house on the afternoon of that day, in the back room of the first story. As he came in his manner appeared excited. There was something strange and unusual about it. His voice was somewhat different from the manner in which I had usually heard

him speak. He advanced and took me by the hand. I think he then said, "A thousand thanks for coming to see me under these circumstances." He had scarcely repeated these words before I saw a great change in his appearance. He became very much convulsed indeed. He threw himself on the sofa, covering his face with his hands. He then broke into an agony of unnatural and unearthly sounds, the most remarkable I ever heard—something like a scream, interrupted by violent sobbing. From his convulsed appearance, he was in the act of writhing. His condition appeared to me to be very frightful, appalling me so much that I thought if it lasted much longer he must become insane. He was indulging in exclamations about dishonor having been brought on his house, his wife and child. He seemed particularly to dwell on the disgrace brought upon his child. I should think this continued ten minutes. I endeavored to pacify him. I turned from him to go for a physician myself, but he seemed to stop a little these violent exclamations, and finally they broke down. The spasms became more violent until they ceased. I think I must have been there something over half an hour. I accompanied him from there to the jail. Mayor Berrit, Captain Goddard and, perhaps Mr. Butterworth, were there. I was still alarmed at his condition, not knowing when the convulsions would recur. I believe I drove with him in Dr. Gwin's carriage, with whom I came to Mr. Sickles.

Certainly, this graphic picture of a terrible and tragic scene was not without its effect. A short cross-examination brought out nothing of importance up to the moment in court when Mr. Sickles was overcome by emotion, or nerves, and nearly collapsed. The contemporary account reads:

At this point, Mr. Stanton, who was near the prisoner, asked that the cross-examination be discontinued for the present, in order that the accused might retire for a few minutes. Mr. Sickles, during the statement of this witness, was violently affected—breaking out

into sobs and profusely shedding tears. E. B. Hart and Isaac Bell, one on each side, and Mr. Sickles, Senior, together with others, accompanied him from the court room. The witness particularly, and many of the spectators, were moved to tears. The scene was one of deep interest. In some few minutes Mr. Sickles was brought back into court, his countenance still indicating extreme mental suffering, and the desolateness of his whole appearance awakening the strongest sympathy in the breasts of all who saw him. His father was much affected by his condition.

Could there be a better argument against trial by jury? The cross-examination was now resumed, the prosecution failing to better its case in the least:

**WITNESS.**—I do not know who sent for Goddard, the Chief of Police. My impression was that it was Sickles or some of his friends. After a time, Sickles became calmer, but did not resume his natural appearance. He quitted sobbing and crying for some time.

**TO MR. CARLISLE.**—I can compare Sickles' condition to nothing but an agony of despair. It was the most terrible thing I ever saw in my life. He was in a state of frenzy at the time, and I feared that if it continued he would become permanently insane; his screams were of the most frightful character; they were unearthly and appalling, and were interrupted by something between a sob and a moan. Sometimes he would start and scream in a very high key. He appeared in a state of perfect frenzy.

**QUESTION.**—What do you mean by that? Do you mean a passion of grief?

**WITNESS.**—It was much deeper than grief. It exhibited more alarming symptoms than any grief I had ever witnessed before. I had seen a man a long time ago under similar circumstances in Pittsburgh, but his grief was not so strong as this. Mr. Sickles' exclamations of grief were more about his child than anything else.

I remained there for about half an hour. I had moved to the door to go for a physician, but there was some cessation in these paroxysms, and I did not go. My impression is that it was Mr. Butterworth who sent for the magistrate.

QUESTION.—Do you recollect that Sickles grew calm, and said he was ready to go with the magistrate?

WITNESS.—I do; when I say calm, I mean comparatively calm. I went with him to the jail, because I feared a recurrence of his paroxysms of grief and despair. I remained at the jail from one to two hours. No physician saw him during that time to my knowledge. There were few persons at the jail; none but the magistrate, Mr. Goddard, Mr. Butterworth and one or two others. It could not have been more than four or five minutes between these paroxysms and the coming in of the magistrate. The first part of this scene was witnessed only by Mr. Butterworth and myself. I never was so much excited as I was on that occasion. I should think that about ten minutes transpired during which Butterworth, Sickles and myself were in the room together; I first went into the front room, and afterwards into the back room. There were several persons in the front room, but I could not name one of them; the rooms communicated by folding doors and I think they were closed. I went through these doors into the back room. The persons in the front room could not witness this scene, as the doors were closed—at least during part of the time. My impression is that the next person I saw in the back room was Mr. Berrett (*spelled both Berrett and Berrit in transcript of testimony*), the Mayor.

The witness went on to tell of another outburst of hysteria which took place later in the same day at the jail. This second spasm was much less violent than the first. Another witness testified to Mr. Sickles' wild appearance, and then came the dramatic moment of the trial—Mrs. Sickles' confession. This was introduced through the testimony of one Bridget Duffy, whose statement was as follows:

I live in Mr. Sickles' house in the capacity of nurse and lady's maid, and partly chambermaid. I have been living there since November last a year. I knew Mr. Key a short time after I came to Washington. We came to Washington this year between Christmas and New Year's. I remember the Saturday before Mr. Key's decease. Mr. Sickles came home in the evening between five and six o'clock. There was no set time for dinner; sometimes it was at five and other times at half past five. Mrs. Sickles was at home that afternoon. I did not see him (Mr. S.) at the dinner table; he went downstairs to dinner. That night my attention was called to Mr. Sickles; there was some unhappy feeling between Mr. and Mrs. Sickles. Mr. Sickles went downstairs. He did not eat, but returned to his bedroom. He asked me to fetch him up something to eat, which I did. His manner and appearance seemed troubled. I saw him half or three-quarters of an hour after I left the dinner for him. Mrs. Sickles was in her bedroom. I then went down to get my dinner. I returned to my bedroom and stayed there a considerable time. I heard loud talking between Mr. and Mrs. Sickles. Their door was partly open. This was after six o'clock. I continued to listen a few moments, and then went to the kitchen. Twenty minutes or half an hour afterwards I again went upstairs. They were still in the bedroom. Their bedroom was in the front of the second story. My room was on the other side, nearly opposite. When I went in, it was about seven o'clock. I think I went in to fix the fire, or take away the waiter.

MR. BRADY.—Mr. Phillips, I will hand a paper to the witness.

This was done, and the witness, after looking at one of the signatures, said it was her "handwrite" adding, "I signed this paper in the bedroom when Mr. and Mrs. Sickles were present. I signed at Mrs. Sickles' request. Miss Ridgeley signed it in my presence. I don't know what then became of the paper."

MR. BRADY.—I'll take that paper. (*It was given him.*) Do you know Mrs. Sickles' handwriting?

WITNESS.—Yes.

MR. BRADY.—Is that hers?

WITNESS.—To the best of my belief it is. I saw her write a paper, which I signed my name to. I did so at her request. I went to sleep about twelve. Mr. and Mrs. Sickles were, I believe, then in their own room. I don't know whether Mr. Sickles went to bed that night. I don't think Mrs. Sickles went to bed. She lay on the floor all night, having gone into an adjoining room, where I saw her on Sunday morning. She was sitting on the floor, with her head on a chair. Mr. Sickles was downstairs when I saw Mrs. Sickles. That was about eight o'clock. Mrs. Sickles stayed in that room all day. Before I went to bed I heard exclamations and sobbing. I heard Mr. Sickles cry. Also Mrs. Sickles. In the morning I met Mr. Sickles on the stairs. He was crying. It was about half past eight when I met him. He held his face in his hands, and was crying and sobbing and in great trouble. I was very sorry to see him in trouble. I commenced crying. I heard crying in the study before I saw Mr. Sickles. I believe Mr. Wooldridge was in the study, but I did not see him. Mr. Sickles was going upstairs.

MR. BRADY.—I will hand this paper to the counsel on the other side. We propose to read it in evidence. It is Mrs. Sickles' statement to her husband.

This statement or confession, which follows, was not in fact permitted to be given as evidence, so that the jury and spectators were forced to wait until after the trial for that delectable morsel with which Daniel E. Sickles completed his own shame. The pitiable statement became public almost at once, however.

I have been in a house in Fifteenth Street, with Mr. Key. How many times I don't know. I believe the house belongs to a colored

man. The house is unoccupied. Commenced going there the latter part of January. Have been in alone and with Mr. Key. Usually stayed an hour or more. There was a bed in the second story. I did what is usual for a wicked woman to do. The intimacy commenced this winter, when I came from New York, in that house—an intimacy of an improper kind. Have met half a dozen times or more, at different hours of the day. On Monday of this week, and Wednesday also. Would arrange meetings when we met in the street and at parties. Never would speak to him when Mr. Sickles was at home; because I knew he did not like me to speak to him; did not see Mr. Key for some days after I got here. He then told me he had hired the house as a place where he and I could meet. I agreed to it. Had nothing to eat or drink there. The room is warmed by a wood fire. Mr. Key generally goes first. Have walked there together, say four times—I do not think more; was there on Wednesday last, between two (*and*) three. I went there alone. Laura (*the Sickles' daughter*) was at Mrs. Hoover's. Mr. Key took and left her there at my request. From there I went to Fifteenth Street to meet Mr. Key; from there to the milk woman's. Immediately after Mr. Key left Laura at Mrs. Hoover's, I met him in Fifteenth Street. Went in by the back gate. Went in the same bedroom, and there an improper interview was had. I undressed myself. Mr. Key undressed also. This occurred on Wednesday, 23rd of February, 1859. Mr. Key has kissed me in this house (*the Sickles' house on President's or Lafayette Square*) a number of times. I do not deny that we have had connection in this house, last spring, a year ago, in the parlor, on the sofa. Mr. Sickles was sometimes out of town, and sometimes in the Capitol. I think the intimacy commenced in April or May, 1858. I did not think it safe to meet him in this house, because there are servants who might suspect something. As a general thing, have worn a black and white woolen plaid dress, and beaver hat trimmed with black velvet. Have worn a black silk dress there also, also a plaid silk dress, black velvet cloak trimmed with lace,

and black velvet shawl trimmed with fringe. On Wednesday I either had on my brown dress, or black and white woolen dress, beaver hat and velvet shawl. I arranged with Mr. Key to go in the back way, after leaving Laura at Mrs. Hoover's. He met me at Mr. Douglas'. The arrangement to go in the back way was either made in the street or at Mr. Douglas', as we would be less likely to be seen. The house is in Fifteenth Street, between K and L Streets, on the left-hand side of the way; arranged the interview for Wednesday in the street, I think, on Monday. I went in the front door, it was open, occupied the same room, undressed myself, and he also; went to bed together. Mr. Key has ridden in Mr. Sickles' carriage and has called at his house without Mr. Sickles' knowledge, and after my being told not to invite him to do so, and against Mr. Sickles' repeated request.

TERESA BAGIOLI.

This is a true statement, written by myself, without any inducement held out by Mr. Sickles of forgiveness or reward, and without any menace from him. This I have written with my bedroom door open, and my maid and child in the adjoining room, at half past eight o'clock in the evening. Miss Ridgeley is in the house within call.

TERESA BAGIOLI.

Lafayette Square, Washington, D. C., Feb. 26, 1859.

Mr. and Mrs. Pendleton dined here two weeks ago last Thursday, with a large party. Mr. Key was also here, her brother, and at my suggestion he was invited, because he lived in the same house, and also because he had invited Mr. Sickles to dine with him, and Mr. Sickles wished to invite all those from whom he had received invitations; and Mr. Sickles said, "do as you choose."

TERESA BAGIOLI.

Written and signed in the presence of C. M. Ridgeley and  
Bridget Duffy.

Feb. 26, 1859.

By instigating his wife to write this pathetic document, for no one can doubt that it was done at his instigation, Mr. Sickles successfully acquitted himself of all responsibility and completed the dishonor that he seems to have felt so keenly. That it was largely dictated by him there can be no question. It smacks damnably of the lawyer, particularly in the postscripts, and was obviously intended to be produced in court. Whatever one may think of Mr. Key's conduct, that of Mr. Sickles' was contemptible.

During the rest of this day, the eighth, the opposing counsel fought for and against the admissibility of Mrs. Sickles' confession. It was not until the following day that the court delivered its decision. The confession was barred and the defense took an exception. It is a fact worthy of note that, if the confession had been admitted, the prosecution was prepared, so it claimed, to show in its turn the infidelity of Mr. Sickles. So much for virtue.

Miss C. M. Ridgeley was now called to the stand to testify in her turn as to the events of Saturday night and Sunday morning. She added nothing essential to the testimony already given by Bridget Duffy, except to reiterate Mr. Sickles' hysterical condition, and to point out that she had passed Saturday night in the room wth Mrs. Sickles; she in bed and Mrs. Sickles sitting on the floor. Then, Bridget Duffy was recalled, but added little that was new. She told of Mr. Key passing the Sickles' house several times on Sunday, on his way to and from the Club, and remarked that he had waved his handkerchief with a peculiar whirling motion on going by the Sickles' windows. This was the signal to Mrs. Sickles, so it was alleged, that brought the furious husband to the street, and to murder.

On the tenth day, various witnesses were called to give

evidence of Mr. Sickles' hysterical condition on the 27th of February, and then the defense made another determined attempt to get the famous confession admitted in evidence. A bitter wrangle between counsel followed. The entire subject of privileged communications between husband and wife was fought through, and the law as it affected free-men was compared with that which dealt with the marital rights of slaves. It was even pointed out that, in North Carolina, the wife of a slave might be examined against her husband, because slaves could not, under the law, contract marriage, though "natural relations were recognized"! The defense had to prove the adultery, which would be much easier if the confession were admitted, and further, it had to prove that the adultery had driven Sickles momentarily insane.

On this day and the next, testimony was given relating to the examination of the Fifteenth Street house by the defense, subsequent to the shooting. They were, of course, looking for incriminating evidence of adultery, but little was found and the testimony was of small actual value. The house seems to have been a very sordid, miserable place, a fitting genesis for what followed. Midway, in the eleventh day, the Rev. C. H. A. Bulkley was called by the defense and, as his testimony was of undoubted value to Mr. Sickles, besides throwing a curious light on his curious character, it deserves quotation:

I am the Rev. C. H. A. Bulkley, a clergyman, and reside in Westminster, Connecticut. I have known Mr. Sickles since 1838. We were associated together in the New York University. Mr. Sickles was in our class pursuing his studies in the department of belles lettres. Our pursuits being, since that time, diverse we have

not cultivated an acquaintance, but we have recognized each other as we met.

QUESTION.—Do you know the liability of Mr. Sickles to intense and sudden excitement?

WITNESS.—Yes, sir.

The prosecution here objected, but finally withdrew its objection, and the witness was permitted to continue:

QUESTION.—State what you know of the tendency of Mr. Sickles' mind to become disordered on being subject to some great emotion.

WITNESS.—The incident which I am about to state occurred, I think, in the year 1840, on the occasion of the death of Professor Da Ponte, in the city of New York. He was a kind of patron and guardian of Mr. Sickles, or rather, I might say, Mr. Sickles was regarded by us students as his protégé—as one in whom Da Ponte took a special interest with regard to his education. In the cemetery where Professor Da Ponte was buried, immediately after the body was lowered into the ground, Mr. Sickles broke out into a passionate spasm of grief and most frantic energy. He raved and tore up and down the graveyard, shrieking and, I might even say, yelling; so much so that it was impossible for us who were his friends to mollify him in any measure by words. We were obliged to take hold of him, and by friendly force restrain him, and thus, ultimately, we took him out of the cemetery. The demonstration that he made might be called one of frantic grief.

QUESTION.—Did he do any violence to his person or his garments, or anything of that kind?

WITNESS.—I cannot say positively as to that, but the impression I have is that he did tear his clothes and his hair. I cannot swear positively as to that. The other facts are very indelibly impressed on my mind.

QUESTION.—Is the statement now made by you one that was

sought by the prisoner's counsel, or are you here in consequence of a voluntary communication from you?

WITNESS.—It has not been solicited at all. It was suggested to my mind as being a piece of testimony which would be a benefit to Mr. Sickles.

MR. CARLISLE (*for the prosecution*).—It is not necessary to state that. Nobody imputes improper motives to you.

MR. STANTON.—It is only to show that Mr. Sickles was unconscious of anything strange having taken place on that occasion.

MR. BRADY.—You can prove that Mr. Sickles did not directly or indirectly apply to you to give this testimony?

MR. CARLISLE.—Nobody says he did.

MR. BRADY.—I want to exclude the possibility of that idea.

MR. CARLISLE.—Nobody questions it.

WITNESS (*in reply to Mr. Ould*).—I cannot tell precisely what was Mr. Sickles' age at the time of that occurrence. It was in 1840. I suppose we would have called ourselves young men then. (*Sickles must have been 15 in 1840.*)

MR. BRADY.—Young America! (*Laughter.*)

WITNESS.—We were both about the same age. I am now forty years of age. I cannot say how long this frantic grief lasted—somewhere between five and ten minutes. I saw no trace of it the day following. I was not associated with him then, as I graduated in 1839, and went to the New York Theological Seminary. I do not recollect whether I saw Mr. Sickles the next day. I did see him two or three days afterwards. I did not then notice anything extraordinary or unusual in his appearance. I might say, possibly, that he appeared to be rather lighter-hearted, and apparently too much so, under the circumstances. His light-heartedness seemed unnatural in contrast with the grief he had exhibited two days before. With respect to the first manifestation, it was the most remarkable one I ever saw. I have been in the ministry for several years, and have never seen anything like it. There was nothing particular, on the second occasion, to produce mirthfulness.

The testimony of the reverend gentleman was a heavy score for the defense, and the prosecution was unable to offer any rebuttal. The testimony of the next few witnesses was a trifle ambiguous: it was a little difficult to see just where they were heading. Mr. Carlisle, of the prosecution saw, however, and cut in with an objection that "they were sliding along in the direction of giving evidence of adultery." All through the defense, it is difficult to remember that Daniel E. Sickles is on trial for murder, and not Mrs. Sickles for adultery. Again opposing counsel locked horns, and wrestled with theory. Was direct evidence of adultery admissible or was it not? The argument began on the eleventh day, and ended on the thirteenth, when the court decided in favor of the defense.

Evidence was now introduced in circumstantial proof of adultery and, from the several witnesses who were called, the testimony of Mrs. Nancy Brown, who lived near by the Fifteenth Street house, is taken as being at once typical and colorful:

I was sufficiently acquainted with Mr. Key to know him. The last time I saw him was on the Wednesday before he was shot, when he went into the house on Fifteenth Street. I saw him take a key out of his pocket, unlock the door, and go in. He came out in about an hour. I am acquainted with Mrs. Sickles. I saw her go backward and forward often. I saw her go in and then out the back way. He would go to the back gate and let her out, and then would come out of the front door.

QUESTION.—How long were they in the house?

WITNESS.—About an hour.

QUESTION.—How did you know that it was Mrs. Sickles?

WITNESS.—I inquired different times. I saw Mrs. Sickles at

her own house after that; then, other persons were present. She was the lady I had seen go into the brick house.

QUESTION.—How often had you before that Wednesday seen him go into that house?

WITNESS.—I saw him go in three times before, when he unlocked the door and took the key from his pocket. I saw Mrs. Sickles go with him and have hold of his arm, except the Wednesday before Mr. Key was killed.

QUESTION.—What time elapsed between these three times you saw them go into that house?

WITNESS.—About a week. I saw them go in three times within three weeks. Key came up to my door in October. He rode up. He stepped on the porch and asked me whether the house was occupied. I said no. He asked me who the house belonged to. I told him to a colored man named John Gray, and he lived somewhere on Capitol Hill, and that the colored people could give him all the information. He came about three weeks after that, and tied his horse to my tree. I asked him whether he did not know that that was against the law? (*Laughter.*)

MR. OULD.—That is not evidence.

WITNESS.—I asked him not to tie his horse there again.

MR. OULD.—That's not evidence. Stop, Mrs. Brown!

WITNESS.—I was only telling you what it was. He said, I won't tie it there any more. He said, I rented this house for a friend of mine, and want to see how it is situated. I don't know whether he said it was for a Member or Senator. He then untied his horse and went away. I never spoke to him any more.

QUESTION.—Did you notice anything Mr. Key had with him?

WITNESS.—I noticed, on that Wednesday, he had on a shawl when he went in. It was on his left arm. He had none when he came out. This was on the Wednesday before he was shot. When he first came to the house, we laughed when we saw the smoke come out of the chimney. He went down the yard and got wood

to make a fire. I saw a white string tied to the upstairs shutters, so that when the wind blew it would swing.

QUESTION.—Have you seen the shawl since?

WITNESS.—I saw the shawl, but you know there are many alike, and I don't like to swear to this one.

MR. RATCLIFFE (*to officer*).—Tell Mr. Mann to bring the shawl in.

WITNESS.—I don't want to tell a lie. (*A shawl was produced.*) This looks like it. He had it folded on his left arm.

QUESTION.—How was Mrs. Sickles dressed?

WITNESS.—She had on a little, small plaid silk dress, which she wore open, and she had a black Raglan—a cloak, you know, as I call it—fringed with bugles, and a black velvet shawl with lace. And I saw her in a brown dress, like a traveling dress, the Wednesday she went in and out the back way—it was where they put the wood—the mud was that deep. (*Four or five inches.*) The alley was not paved.

QUESTION.—What was the state of the weather?

WITNESS.—It was always fair when I seed them.

MR. OULD.—That's not evidence.

MR. BRADY.—You say, Mr. Key told you he hired the house for a Senator or Member. Did anybody occupy it except Mr. Key and the lady?

WITNESS.—I never saw anybody go in but theirselves. I am sure I did not.

TO MR. GRAHAM.—I saw them go up and turn back. They saw two policemen standing down K Street. They were at the gate. I was at my gate. They went up Fifteenth Street as far as I could see them.

Mr. Stanton requested that the accused might withdraw, perhaps from delicacy, during this examination. To this the prosecution said they had no objection, and Mr. Sickles accordingly retired, accompanied by an officer.

MR. GRAHAM.—Did you see them come back that day?

WITNESS.—Not likely! They were so scairt, they run away.  
(*Laughter.*)

MR. OULD (*cross-examining*).—Whereabouts do you live?

WITNESS.—I live next door but one to John Gray's. There are three little houses in a small frame. I live on the north.

Mr. Brady here put in a true copy of the survey of the premises from the Surveyor's Office.

Mr. Ould examined the witness particularly about the houses and their tenants in that immediate neighborhood. Mrs. Brown said that the first time she saw Mrs. Sickles was three weeks after Mr. Key told her he had taken the house.

WITNESS.—I think it was in November when Mr. Key first came to Gray's house. I tuck no particklar notice. I was standing at my gate.

QUESTION.—How many feet from Gray's house?

WITNESS.—I never measured it! (*Laughter.*)

QUESTION.—About as far as the back part of this room from where you stand?

WITNESS.—I don't think it's so far.

QUESTION.—How do you know it was Mrs. Sickles?

WITNESS.—Because I inquired, and was told. I asked different people, and they all told me it was her, and when I saw her at her own house, I knew it was the same person.

QUESTION.—Why did you go there?

WITNESS.—I went to see if it was the same lady.

QUESTION.—What was the occasion of your going there?

WITNESS.—She sent for me to identify her, whether it was the same person. It was the Tuesday after the killing.

QUESTION.—How many times, altogether, did you see them go into the house?

WITNESS.—Three times, and at another they only came to the

gate, as I said before. Mr. Key unlocked the door for her to come in.

QUESTION.—How far off were you?

WITNESS.—Not so very far—from here to there. She had a black bonnet on, but no veil the time I seed her. I could see her feturs. I knowed her afore, and of course knowed her agin. I was standing at my front door and I seed her go in at the front door. She passed by me and looked in my face. She was with Mr. Key each time. The policemen were standing at the corner of Fifteenth and K Streets talking, when Mr. Key and Mrs. Sickles came there the last time. They passed on to go into the house, but did not go furder. They saw the policemen, and immediately turned back.

QUESTION.—I suppose they saw them?

WITNESS.—I know they did, for they started off.

QUESTION.—Did they return that day?

WITNESS.—It is not likely they returned that day; not likely, gentlemen! I did not watch more after that. I knew they were not so foolish. (*Laughter.*) After they seed the police—not likely after that! (*Renewed laughter.*)

The testimony of this witness is sufficiently typical to be taken as representative. One point, however, is worth special emphasis. Mrs. Brown testifies that Mrs. Sickles "sent for me to identify her." This was on the Tuesday after the murder. If this were true, it would be strange but not impossible from a psychological standpoint, considering the confession that had already been wrung from her. The pangs of conscience might have led Mrs. Sickles to do everything in her power to see that the halter was firmly fixed about her own neck. It transpired, however, in the testimony immediately following that of Mrs. Brown that, though it may well have been represented to her that she

went to Lafayette Square at Mrs. Sickles' request, such was not the case. She was taken there by a Charles Mann, acting in the interests of the defense, and who describes himself as a policeman. It was Mann, likewise, who connived with the defense to break into the Fifteenth Street house in the attempt to secure tangible evidence against Key and Mrs. Sickles. It is the designation "policeman" that is puzzling, for if Mann was a member of the police force of the District of Columbia, as one is led to believe, his duty would be to the prosecution rather than to the defense. The part he played is clear, but his position is not. It may be that he was merely a private inquiry agent. At any rate, both sides appear to have accepted him and his testimony, which amounted to very little, at their face value. It is perfectly plain from all of the testimony given at this juncture, by witness after witness, that Mr. Key and Mrs. Sickles were the center of gossip in Washington, and that not a movement they made passed unobserved. Only Sickles was blind. The lovers were stared after in the streets, and watchful eyes followed them to and from their place of assignation time and time again. Their lack of discretion was incredible.

It is somewhat difficult for the lay mind to understand just why all this testimony relating to the adulterous relationship of Key and Mrs. Sickles was relevant to the issue. The defense was not actually pleading justification—though that was tacitly included in their implication—but the unsound state of Mr. Sickles' mind at the time of the murder. It would seem, therefore, that if they were able to prove this condition of mental irresponsibility, there would be no actual need to prove precisely what caused it. Further, as a matter of fact, as will be shown later on, while they were able to offer sound evidence as to Mr. Sickles' excited and over-

wrought state both before and after the murder, they could offer nothing to show that he was at all unbalanced at the time of the shooting. Indeed, the state was able to show that during the commission of the crime the accused was perfectly cool and had himself well within control.

We come now to some of the most vital testimony given during the trial.

Mr. Wooldridge, a friend of the Sickles who had testified earlier, was recalled to the stand, and Mr. Brady handed him an envelope and letter, asking whether he had ever seen them before!

**WITNESS.**—Yes, both of them. I saw them on the Friday before the killing. On the 25th of February I saw them first, at the Capitol. They were shown me by Mr. Sickles. He read all of the letter (to me) except two or three lines. He could read no more. That was about one o'clock. I gave it back to him and put a mark on the envelope and letter. (*As this marking was obviously for the purpose of legal identification, court action of some kind, doubtless divorce, must have been contemplated at the outset.*)

The Court deciding that the letter was admissible, it was read:

Washington, Feb. 24, 1859.

**Hon. Daniel Sickles—**

Dear Sir: With deep regret I inclose to your address the few lines, but an indispensable duty compels me so to do, seeing that you are greatly imposed upon.

There is a fellow, I may say, for he is not a gentleman, by any means, by the name of Philip Barton Key & I believe the district attorney who rents a house of a negro man by the name of Jno. A. Gray situated on 15th Street bt'w'n K and L streets for no other

purpose than to meet your wife Mrs. Sickles, he hangs a string out of the window as a signal to her that he is in and leaves the door unfastened and she walks in and sir I do assure you

With these few hints I leave the rest for you to imagine.

Most Respyly

Your friend

R. P. G.

It may be said at once that if the identity of R. P. G. was ever discovered it was not made public.

There followed one of the usual wrangles between counsel in the course of which it came out that the prosecution had applied to the President to employ additional counsel for the State, and that the President had, very properly, refused to interfere. Finally Mr. Wooldridge's examination was resumed, but as the facts to which he testified were brought out more fully under cross-examination it will be better to pass directly to that:

**CROSS-EXAMINED BY MR. CARLISLE.**—The anonymous letter was exhibited to me by Mr. Sickles about one o'clock on the 25th of February, Friday. It was in the Capitol, in the rear of the Speaker's chair. Mr. Sickles said, as he approached me, taking the letter out of his pocket, "George, I want to speak to you on a painful matter. Last night I received this letter." Mr. Sickles then read all but the two last lines, burst into tears, and handed me the letter. Before I opened it, he said he generally threw anonymous letters aside, but as in this case the facts could be proved or disproved so easily, he thought he would investigate it. Mr. Sickles added, he went in the morning of that day to the neighborhood, as described in the letter, and found that the house had been hired by Mr. Key from the negro man, Gray, and that a lady was in the habit of going there. He further said, "My hope is, that this is

not my wife, but some other woman. As my friend, you will go there, and see whether it is or not." He was very much excited, so much so that he put his hands to his head, and sobbed in the lobby of the House of Representatives. He rushed from the sofa on which he was sitting, and went into another room, in a corner. He said, "Get a carriage. We'll go, and I'll show you the house." I called a carriage, when we entered and drove to Eleventh Street. He showed me Gray's house. I left him at the Treasury building. During the ride, I said I would make the examination. I made up my mind to go and take a room in the vicinity of the house to see whether it was Mrs. Sickles or not.

QUESTION.—At the time Mr. Sickles showed you this letter at one o'clock on Friday, you say he was greatly agitated?

WITNESS.—Yes, sir. He put his hands to his head, and sobbed audibly. The House was in session at the time, and persons were walking up and down. He told me that he entertained a hope that it was not his wife. I parted from him at the Treasury about two o'clock.

QUESTION.—Are you aware of the fact that on Friday, at that hour, Mr. Sickles addressed the House of Representatives?

WITNESS.—I am not aware of that fact.

QUESTION.—Are you aware that on Friday evening Mr. Sickles revised and corrected his speech?

WITNESS.—No, sir. The scenes I have described took place on Saturday. His excitement was not nearly so great as it was on Sunday. It was on Friday at one o'clock that he showed me this letter. I did not take him into a private room on Friday. If I so stated, it was in mistake.

COUNSEL.—I was interrogating you about the circumstance of reading the letter on Friday, at one o'clock, and you described his placing his hands to his head and sobbing audibly, and that you took him into an ante-room.

WITNESS.—I did not take him into the ante-room on Friday. His grief then was not so great as it was the next day. I am not

aware of the fact that that same afternoon Mr. Sickles addressed the House (*on the Navy Bill*) and revised and corrected his speech. I told him on Friday evening that I understood it was on Thursday that the lady was at the house in Fifteenth Street. I was employed as a clerk in the House of Representatives. I was not aiding Mr. Sickles as a clerk this session. I ascertained from a colored man, the son of Mrs. Baylis, that the lady was there on Thursday. When I made this communication to Mr. Sickles he was in the lobby, at the rear of the Speaker's chair. It was between four and five o'clock on Saturday when I made the second report to Mr. Sickles. I ascertained the fact that the day was Wednesday from Mrs. Baylis, the woman from whom I rented the room near the house. Mr. Sickles did not leave the House of Representatives with me on Friday. I did not see how Mr. Sickles occupied himself after I made that communication. I am not aware that he addressed the House or voted on questions after this communication was made.

QUESTION.—Did he explain to you how he had ascertained or found this house in Fifteenth Street?

WITNESS.—He followed the directions of the letter. I presume he made inquiries of somebody. He did not tell me so. I took a memorandum of the dresses described to me. I have it now in my book. He recognized the dresses when I described them, and I felt in my own mind that he was convinced. His exhibitions of grief were then more violent than on the preceding day. I cannot say who was present on that occasion. My attention was so taken up with him that I did not remark. My impression is that he was in the hall when I got there, and I sent in for him.

COUNSEL.—Fix as closely as you can the time of this interview on Saturday.

WITNESS.—Between four and five. At three, I left the house in Fifteenth Street, and went to my house in Twelfth Street. I think I stayed to dinner. I was told that a man had been there with a letter for me. I concluded from the description that it was McClusky, who was about the house. McClusky, while I was

there, came with a note for me from Mr. Sickles, and I immediately went up to the Capitol in a hack. The house in Twelfth Street is between C and D. The hackman who drove me to the Capitol was black. If I took dinner, it would be ready at four o'clock. I am certain I remained in the house an hour, and then rode up to the Capitol. It might have been ten minutes after four when I got to the Capitol and saw Mr. Sickles. I think I remained with him ten or twelve minutes. I left him in the retiring room, and saw no more of him till Sunday morning. I went to his house on Sunday morning. Mr. Butterworth was present when Mr. Sickles said that he saw the villain, Key, pass the house and make signals to his wife.

QUESTION.—How long did he remain in the room at the time?

WITNESS.—A very brief time—very brief indeed. He made use of this exclamation, and Mr. Butterworth endeavored to calm him, as it were. Some conversation took place between them. I do not know the words Mr. Butterworth used. He said something about "only themselves knew it." Mr. Sickles' words were "that he could not—the whole world, or whole town knew it." Mr. Sickles asked what would he do? Mr. Butterworth then said, after hearing that the whole world knew it, "As a man of honor, I have no advice to give you." I think that was all he said. He did not say that, "as a man of honor you have but one course to pursue." I am positive as to that.

QUESTION.—Are you not aware that Mr. Butterworth himself has admitted that he said so?

WITNESS.—I have no recollection of Mr. Butterworth making such a statement. Mr. Sickles was dressed when he came into the room at that interview, as he had been all day. My impression is that when he returned with the officers he had an overcoat on. At the interview, prior to the shooting, he had no outside coat or hat on. He passed into the hall. I do not know where the overcoat was kept. I did not hear him go upstairs after he left the study. I might have heard the hall door open, because Mr. Butterworth passed out. They left the study together. I have no distinct

recollection of Mr. Sickles asking Mr. Butterworth to accompany him to the Club House or any other place. They were in conversation as they passed out of the library into the hall. Mr. Butterworth had been in the house a very short time. He had hardly been in the house when Mr. Sickles came down stairs.

QUESTION.—Did he refer to any signals supposed to have been made from the Club House, in connection with the other signals?

WITNESS.—I had told him that morning I had heard from the servants that signals were made from the Club House. I have no recollection about Mr. Sickles saying to Mr. Butterworth that while she confessed everything she denied about the signals. I have no recollection about his asking Mr. Butterworth to accompany him to the Club House to see if Mr. Key had a room there. There was very little conversation, after the burst about the handkerchief. I was so much affected by his grief, and whatever he said was so broken by sobs, that I could not make out what he said. The steps to the front door are stone. I saw Mr. Butterworth go down as I was sitting in an easy chair by the window. He was alone. He went up towards the avenue. I was not aware that Mr. Sickles was out of the house until he came back. I am not satisfied that Mr. Sickles went down those steps. It has bothered me since how he did get out. If he had gone down the front steps I must have seen him. I had just stepped into the back room to get a stereoscope, and as I laid aside my crutches when I came back, I saw the people running. I meant that if Mr. Sickles had accompanied Mr. Butterworth I would have observed him. If any one had gone down the steps, even while I was not looking out, he would have attracted my attention. There is another outlet to the street from the kitchen apartments. I cannot describe what rooms there are on that lower floor. I believe Mr. Sickles must have gone out by the basement door. I do not recollect seeing his overcoat that morning. My back was towards the clothes rack in the hall. The door in the hall was open when Mr. Sickles and Mr. Butterworth left the study.

It is a curious picture, that of the lame government clerk spying through the snowy darkness on the Fifteenth Street house, and endeavoring to calm his agitated nerves on that fatal Sunday morning by looking at the stereopticon views. The rest of his cross-examination, which was continued on the fifteenth day, was merely an amplification of his statement as given here. The story was told.

Next, the prosecution made a stupid and futile attempt to show that the relationship between Key and Mrs. Sickles had been innocent! The defense responded by testimony showing that Key had been going armed for weeks. Strange that on that Sunday only he should have been weaponless!

After a deal of bickering between the attorneys, and the tying up of a few loose ends of testimony the defense announced that it was about to close, whereupon the prosecution suddenly withdrew its objection to the admission of Mrs. Sickles' confession in evidence. The defense conferred. The rest of this day and part of the next were filled with an acrimonious dispute between the attorneys of the defense and prosecution as to which side was to blame for permitting the confession to become public. The fact that it had become public property was evidently the reason for the willingness of the prosecution to put it on record. At last, however, the defense made a spectacular show of virtue and informed the court that they, at least, would not be a party to making public the record of a woman's shame. As if they had not already moved heaven and earth to prove that woman as shameless as need be!

The sixteenth day opened with an incident that, trivial as it is, is not unamusing. Among the letters received from the counsel on either side from all parts of the country was one addressed to Mr. Brady, from a lady who signed

herself in Greek characters, "Olympia Aiken." Olympia described herself as "one of the order of frailty—one of the simple waiters for the wave of some masculine pocket handkerchief." The letter was dated from West Randolph, Vermont, and asked the counsel's attention to the following extract from "White Lies."

I'd have no wasps around my honey. If my wife took a lover, I would not lecture the woman—what's the use? I'd kill the man, then and there. I'd kill him indoors or out. I'd kill him as I would a snake. If she took another, I'd send him after the first, and so on, till one killed me.

Naturally, the learned counsel resented a quotation that represented the attitude of the defense so plainly, but in such crude terms. Upon this being called to the attention of the court, the judge remarked that there was a letter on his desk directed to one of the jurors, and containing most improper matter. The letter was directed to Mr. Wilson in care of the court. It bore a New York post mark and, assent having been given by both sides, it was given to the addressee who read it and returned it to the bench. The court then stated that nothing was known about either the letter or the writer, except that it had apparently been written from the very worst motives. It was characterized as "an impertinent, improper and unwonted interference with a Court of Justice."

MR. BRADY.—I take it for granted it is, if it relates in any way to the trial.

THE JUDGE.—It does relate to it, and relates to it, exclusively. Let the counsel look at it.

The letter was handed down, and examined by the counsel. Mr. Brady remarked that the manuscript was similar to that of the anonymous letter to Mr. Sickles. Both letters were then examined together, and the counsel agreed as to the great similarity in the handwriting. After some discussion, during which it was urged upon the court that the letter be preserved with a view to discovering its author, Mr. Brady said:

There is but one thing stated in it in relation to which I have any personal knowledge, and that is an atrocious falsehood. If that is a fair criterion of the whole letter, it shows how much its statements are worth.

While the contents of the letter were not made public, it was understood that it made very damaging statements against certain of the counsel. Further, it would appear from Mr. Brady's remark that he was himself involved, and that it was particularly the defense counsel who were under fire. If this letter was written by the mysterious author of the letter to Mr. Sickles the writer seems to have changed sides after realizing to what use Daniel E. put the information given him.

The evidence in chief of both sides being now closed there remained nothing but rebuttal. The defense attempted anew to prove Sickles insane at the time of the shooting, while the prosecution tried with equal emphasis to show that he was mentally controlled. As a matter of fact, he seems to have been in a very hysterical condition, though not necessarily at all unbalanced, both before and after the murder, but entirely cool and collected during the commission of the act. It is difficult enough to prove just what is and is not

insanity within the law, but it is impossible to believe that Sickles did not know exactly what he was doing and the probable consequences. Indeed, there is much in this case that reminds one of the shocking miscarriage of justice that permitted Remus to go scot-free after the murder of his wife in Ohio during the late months of 1927.

The rebutting testimony, interspersed with the interminable wrangles that characterized the entire trial, finally came to an end on the eighteenth day, counsel apparently quitting from exhaustion. Both sides agreed to exchange summaries of points or instructions that were to be given the jury, and the stage was set for the closing speeches. That of the defense was parallel to its opening. It lasted from the middle of the eighteenth day well into the twentieth, and the entire history of domestic relations, according to the holy scriptures, was regiven. The prosecution was terse and to the point. True, a leaf was taken from the book of the defense, and there were a few Biblical allusions, but it was a half-hearted effort. The court summed up very fairly. If there was a reasonable doubt of insanity the jury was to acquit. Both the charge of the presiding judge and the closing speech of the prosecution were based primarily on law. The defense, as usual, dealt chiefly in emotional flim-flams and sentimentalism. The defense was right. Emotion is everything to a jury.

The jury stayed out seventy minutes, and brought back the inevitable verdict of Not Guilty, whereupon Daniel E. Sickles was discharged from custody, and left the court "amid the cheers of the audience."

Considering the fact that he had, technically, been freed from a charge of murder by pleading temporary insanity, Mr. Sickles' subsequent career is interesting. In the next

year, 1860, he was triumphantly reëlected to Congress. In 1861, on the outbreak of the Civil War, Sickles raised a regiment of volunteers, and was given command as Colonel. His war service was excellent, and he rose finally to the rank of Major General in command of the III Army Corps. He lost a leg at Gettysburg, but continued to serve. After the war, he was sent on a confidential diplomatic mission to Colombia, and from 1869 to 1873 he was the American Minister to Spain. Sheriff of New York in 1890, he was again sent to Congress in 1893. He died finally, full of years and honors, in 1914.

Mrs. Sickles, having been sent back to her family in New York, died, broken and in obscurity, two or three years after the trial. She was then about twenty-five years old.

What eventually happened to the four orphaned children of Philip Barton Key history does not tell us.

The honor of Daniel E. Sickles was preserved.



# THE WOLF OF MONTLUEL



## THE WOLF OF MONTLUEL

*The Trial of the Dumollards for various murders, at the Assizes of the Ain, Sitting at Bourg, on the 29th of January, 1862.*

THE neighborhood of Montluel, a small town about twelve miles from Lyons, on the road to Geneva, enjoys a traditional ill repute. Across the plain of Valbonne, on which it stands, may be seen the glimmer of two white houses, the Great and Little Dangerous, so called from having been in former days the scene of many a deed of lawless violence. The country around is broken, sparsely inhabited, and dotted with patches of dense and somber woodland, sometimes reaching almost to the dimensions of forests. No robber could desire a finer locality for his trade.

For six years, dating from February, 1855, the ancient bad reputation of this precinct had been revived. On the 8th of February, 1855, some sportsmen, threading the thickets of Montaverne, came on the corpse of a young woman, covered with blood, which had proceeded from six terrible wounds in the head and face. The body was stripped, and had been subjected to outrage. A handkerchief, collar, black lace cap, and a pair of shoes, were picked up close at hand. By the aid of these things, the deceased was soon identified as Marie Baday, late a servant at Lyons, which city she had quitted three days before. She had stated as the reason for her departure that a man from the country had offered her a good situation in the neighborhood, provided she could take it at once. Precisely similar

proposals had been made, on the same day, to another servant girl, Marie Cart, the agent being a country looking man, aged about fifty, and having a noticeable scar or swelling on his upper lip. Marie Cart postponed her answer until the 4th of March, a circumstance which probably induced the suspected person to address himself, in the interim, to Marie Baday.

On the 4th of March, the same man called again upon Marie Cart, who finally declined his offer, but introduced him to a friend of hers, Olympe Alabert, also a servant, who, tempted with what she considered a generous proposal, closed with it, and left Lyons under the guidance of the supposed countryman. Night was falling as they entered the wood of Montaverne, in which, a few days before, the body of Marie Baday had been found. Acting upon a sudden impulse, induced, perhaps, by the gloomy solitude of the place, the girl fled from her conductor and sought refuge on a neighboring farm.

At this point, curious as it seems, considering what a stratum of crime they had touched, the discoveries of the police ended for the time.

In the month of the September following, a man, answering in every detail to the former description, induced a girl named Josephte Charlety to accompany him to a pretended situation as a domestic servant, and both left the city together. Their way led through cross-roads and, as night came on, the girl, like Olympe Alabert, was oppressed with a nameless terror and fled to the nearest house.

On the 31st of October, the wolf again visited the fold, and selected Jeanne Bourgeois, another servant. But, once more, an opportune misgiving saved the intended prey. Surely, this man must have exhaled some indefinable men-

ace. In the succeeding month, the wolf made choice of Victorine Perrin, but, on this occasion, some travelers being encountered, it was the wolf who took to flight, carrying with him the girl's trunk, containing all her clothes and money. None of these incidents seem to have provoked much attention from the supine authorities, and horrible deeds, actually in the course of commission, were only brought to light by the almost miraculous escape of another proposed victim, Marie Pichon.

On the 26th of May, 1861, at eleven o'clock at night, a woman knocked wildly at the door of a farm, in the village of Balan, demanding help against an assassin. Her bruised and wounded face, torn garments, shoeless feet, all bore testimony to the imminence of the danger from which she had escaped. Conducted to the brigade of gendarmerie at Montluel, she made the following statement, which was listened to at the subsequent trial with the keenest interest.

#### STATEMENT OF MARIE PICHON

To-day at two o'clock, I was crossing the bridge La Guillotière, at Lyons, when a man I had not before observed, but who must have been following me, plucked at my dress and asked me if I could tell him in what street the Servants' Office was situated. I mentioned two, adding that I was myself about to visit the latter. He asked if I were in search of a place. "Yes," said I. "Then," said he, "I have exactly the thing to suit you. I am a gardener at a château near Montluel, and my mistress has sent me to Lyons with positive orders to bring back a house-servant, cost what it may." He enumerated the advantages I should enjoy, and said that the work would be very light, and the wages two

hundred and fifty francs, besides many Christmas boxes. A married daughter of his mistress paid her frequent visits, and always left five francs on the mantelpiece for the maid. He added that I should be expected to attend mass regularly.

"The appearance, language, and manner of the man gave me so strong an impression of good faith that, without a minute's hesitation, I accepted his offer, and we accordingly left by the train, which arrived at Montluel after nightfall, at about half-past seven. Placing my trunk upon his shoulder, he desired me to follow, saying we had now a walk of an hour and a half, but that, by taking cross paths, we should quickly reach our destination. I carried in one hand a little box; in the other my basket and umbrella. We crossed the railway and walked for some distance along the parallel road, when the man turned suddenly to the left and led me down a steep descent, skirted on both sides by thick bushes. Presently, he faced around, saying that my trunk fatigued him, and that he would conceal it in a thicket, and come for it with a wagon on the morrow. We then abandoned the path altogether, crossed several fields, and came to a coppice, in which he hid the trunk, saying that we should presently see the château. After this, we traversed other fields, twice crossing over places that looked like dried-up water courses, and finally, through very difficult ways, rather scrambling than walking, arrived at the summit of a little hill.

I must mention something that had attracted my attention. Throughout the walk, my guide seemed remarkably attentive, constantly cautioning me to mind my steps, and assisting me carefully over every obstacle. Immediately after crossing the hill I spoke of, his movements began to give me uneasiness. In passing some vines, he tried

to pull up a large stake. It resisted his efforts, however, and, as I was following close at his heels, he did not persevere. A little further, he stooped down and seemed to be endeavoring to pick up one of the large stones that lay about. Though now seriously alarmed, I asked, with all the indifference I could command, what he was looking for. He made an unintelligible reply, and presently repeated the maneuver. Again I inquired what he was looking for—if he had lost anything? “Nothing, nothing,” he replied, “it was only a plant I meant to pick for my garden.” Other singular movements kept me in a state of feverish alarm. I observed that he lagged behind several times and, whenever he did so, moved his hands about under his blouse, as if in search of a weapon. I was frozen with terror. Run away I durst not, for I felt he would pursue me; but I constantly urged him to lead the way, assuring him that I would follow.

In this way we reached the top of another small hill, on which stood a half-built cottage. There was a cabbage garden and a good wheel-road. My very fear now gave me the necessary courage. I resolved to go no further, and at once said, “I see you have led me wrong. I shall stop here.” Hardly had the words left my mouth, when he turned sharply around, stretched his arms above my head, and let fall a cord with a running noose. We were at this moment almost in contact. Instinctively, I let fall everything that I carried, and with both hands seized the man’s two arms, pushing him from me with all my strength. This movement saved me. The cord, which was already round my head, only caught and pulled off my cap. I shrieked out, “My God! My God! I am lost!”

I was too much agitated to observe why the assassin did

not repeat his attack. All I recollect is that the cord was still in his hand. I caught up my box and umbrella, and flew down the hill. In crossing a little ditch, I fell and bruised myself severely, losing my umbrella. Fear, however, gave me strength. I heard the heavy steps of the murderer in pursuit, and was on my legs again in an instant, running for life. At that moment the moon rose above the trees on my left, and I saw the glimmer of a white house on the plain. Towards this I flew, crossing the railway, and falling repeatedly in my headlong course. Soon I saw lights. It was Balan. I stopped at the first house. A man ran out, and I was saved.

The authorities were now thoroughly roused, and at once commenced a searching inquiry. Ultimately, the eye of justice rested on a certain house in the small hamlet of Dumollard. Village gossip spoke unreservedly of the skulking, nocturnal habits of its master, and the stern, unsocial manners of his wife. Their name was the same as that of the village, Dumollard, a very common name in that district. The man had a peculiar scar or tumor on his upper lip.

The magistrates at once waited upon Dumollard, and requested an explanation of the employment of his time on the day and night of the 28th of May. The answers being evasive, and certain articles in the house having a very suspicious look, Dumollard was given into custody, conveyed to Trevoux, and instantly identified by Marie Pichon as her assailant. Meanwhile, a search in his house resulted in the discovery of an immense accumulation of articles, evidently the produce of plunder—clothes, linen, pieces of lace, ribbons, gowns, handkerchiefs, shoes—in a word, every species of article that might have belonged to

girls of the servant class. Very many of these bore traces of blood; others had been roughly washed and wrung out. These objects amounted in all to twelve hundred and fifty!

“The man must have a charnel somewhere,” remarked one of the searchers.

It was next ascertained that, in November of 1858, Dumollard was seen to alight one evening at the station of Montluel, accompanied by a young woman, whose luggage he deposited in the office, saying that he would call for it the next day. It was never claimed. “On the night you mean,” said Madame Dumollard who, after the search in the house, had been likewise taken into custody, and who now showed a disposition to confess, “Dumollard came home very late, bringing a silver watch and some blood-stained clothes. He gave me the latter to wash, only saying, in his short way, ‘I have killed a girl in Montmain Wood, and I am going back to bury her.’ He took his pickax and went out. The next day he wanted to claim the girl’s luggage, but I dissuaded him from doing so.”

In order to verify this statement, the magistrates, on the 31st of July, 1861, repaired to Montmain Wood, taking with them the two accused. For some hours, all their searches proved fruitless, the woman declaring her inability to point out the precise spot, and the man preserving a stolid silence. At length, some appearance of a tumulus was detected among the bushes, and a few strokes of the pickax made visible some bones. A circular trench was then carefully dug, and a perfect female skeleton was discovered. The skull presented a frightful fracture. Under it was found some brown hair and a large, double hairpin.

The prisoners were now brought forward, and confronted with the silent witness.

The woman having volunteered further confession, the party now proceeded to the wood, Communes, also near Montluel but, night coming on, investigation was deferred until the day following. A great part of the next day was passed in fruitless search when, just as the party was prepared to return to Montluel with the view of organizing exploration on a wider scale, Dumollard suddenly declared that he would himself point out the place they sought.

He thereupon guided them to a spot about fifty yards deeper in the wood. Here they labored for another hour with no greater success, until one of the officers noticed a slight displacement of the soil, presenting some slight fissures, from whence flies were issuing. Above this spot, two small shrubs, evidently planted there by design, had taken feeble root.

A stroke of the spade laid visible the back of a human hand. Presently, the body of a young woman, in complete preservation, owing to the peculiar character of the soil, was exposed to view. The corpse lay on its back, the left hand on the bosom, the fingers clutching a clod of earth. Appearances favored the ghastly conclusion that the victim had been buried while alive and still conscious!

The bearing of Dumollard in the presence of this new and terrible accuser was as calm as ever. Not the slightest trace of emotion was perceptible on his stolid face. It was observed, nevertheless, that he carefully avoided looking at the face of his victim. The magistrates seized this moment to impress on him the uselessness of any further attempt to evade justice, and invited him to make a full confession. After a few minutes of seeming hesitation, he commenced the following remarkable recital:

## DUMOLLARD'S STORY

One day in December, 1853, I was accosted in Lyons by two individuals of the farmer class, whose manner and appearance won my unlimited confidence. After treating me to wine at a neighboring tavern, they invited me to stroll on the quay, asked me a multitude of questions, and finally proposed to me to enter their service. I inquired the nature of the work required of me. "The abduction of young women," was the reply. "You shall have forty francs for every prize and, if you remain with us twenty years, we will guarantee you a hundred thousand francs."

Such a proposal seemed far too advantageous to be treated lightly. They gave me the necessary instructions, which were simple enough. I was merely to look out for young females in search of situations, offer them first-rate wages, and conduct them beyond the town.

A week later we commenced operations on the Place de la Charité. My first attempt failed, but the second woman I accosted listened to my story, accepted the pretended situation, and accompanied me from the town. At the end of the suburbs my two employers met me. I pretended to have forgotten something and, telling the girl these gentlemen were friends of mine, requested her to go with them, promising to overtake them at Neyron. I lingered about the spot for three hours, when the men returned, and handed me a parcel, saying it was a present for my wife. Opening it, I found a gown and a chemise, both stained with blood. I recognized the dress of the woman I had brought, and demanded what had become of her. "You will not see her again," was the only reply.

On the way home I washed the clothes in the fountain

at Neyron, and gave them to my wife, saying that I had purchased them at Lyons.

I never knew the exact place in which they murdered the girl, but I think it must have been near the bridge Du Barre, and that they flung the body into the Rhone. I think so, because one day in the ensuing summer, while crossing that bridge in their company, one of them remarked, "We have sent two bodies under this bridge already." And this I understood to imply two other murders, anterior to that I have mentioned.

Nothing remarkable happened until February, 1855, when my two friends met me by appointment at a wine shop, and brought with them a young female of dark complexion, with whom and the men I set forth, and proceeded as far as the road leading from Miribel to Romanech, which passes through the wood. Here I sat down, declaring I would go no further. They tried to persuade me to proceed but, finding me determined, presently went on their way, taking with them the girl.

I waited two hours. No cry reached my ears. Still, I had a presentiment of something wrong. The men returned alone, saying that they had left the girl at a farm. As they brought no clothes with them, I was inclined to believe their story. We then parted, and I returned home.

*(No doubt this was the unfortunate Marie Baday.)*

Nothing occurred for two years, during which I had occasional interviews with my two friends. At length, in December, 1858, I fell in with them on the Quai de Perrache. They told me they had something on hand, and would I come? I consented, and they left me, presently returning with a young girl, with whom we started by rail for Montluel. It was dark when we arrived, and the men,

taking me aside, requested me to guide them to some secluded spot, indicating the wood of Choisey. I told them it was too close to the high road; it would be better to go on further. Presently we reached the edge of Montmain Wood. That, I told them, would do.

They left me seated by the roadside. Soon I heard one loud scream, about three hundred yards distant; then profound silence. In a few minutes the men returned, bringing a silver watch and some clothes. I told them that I had heard a scream, and asked if she had suffered much? "No," they answered, "one blow on the head, and another in the side did her business."

We knew that the body of Marie Baday had been found, and it was judged prudent to bury this new corpse. I therefore ran to my house for the tools, and at the same time gave my wife the watch and the clothes, which were stained with blood. She asked me whence they came? Thinking that if I accused others she would not believe me, and relying, like a fool, on her discretion, I replied that they belonged to a girl I had killed, and was about to bury in Montmain Wood. I then went back to my friends, who dug a shallow grave, and concealed the body, while I sat by.

*(This was the victim, never identified, whose skeleton was exhumed on the 31st of July, 1861.)*

Dumollard referred to certain other attempts, which had failed, owing to the suspicions of the intended victims, and then continued:

I must speak now of this girl, Marie Eulalie Bussod, whose body lies before us. I accosted her one day on the bridge La Guillotière, and asked her if she would accept

good place in the country, offering two hundred francs. She required two hundred and ten, and we went to the residence of her sister to discuss the matter, where I agreed to her terms. At the end of a week I returned, and escorted her to the station at Brotteaux, where I had, in the interim, desired my two employers to meet me. They came, and I introduced them to Marie Bussod as friends and neighbors of mine, who would accompany us some little distance after quitting the rail.

It was dark when we reached Montluel, and I had to act as guide, carrying the girl's trunk. "What a lovely creature!" whispered one of my friends to me, as we set out.

I led the way towards the wood Communes, a wild, retired spot, following a path, almost obliterated, towards Croix-Martel. Here I hid the trunk among some bushes, assuring the girl I would return for it in the morning.

Somehow, at this point, my courage failed me. I told my friends I could go no further; at the same time, however, pointing out to them Communes Wood, which lay but a few paces distant. In two hours the men returned, bringing some clothes and a pair of gold earrings, which they gave me for my wife. I inquired what they had done with the girl. "Oh," said one, "she got two blows on the head, and one in the stomach. She made no great outcry." I then went home for a spade, and the men buried her here, as you see.

Marie Pichon would inevitably have suffered the same fate, had not my two employers failed to meet me at the appointed spot. I did not wish to do her any harm. On the contrary, finding the men absent, I wished to get rid of her, and, to frighten her, threw my arms (not a cord, as she affirms) round her neck. I was glad to see her run away. "At least," I thought, "they'll not get this one!"

Some days later, finding an inquiry on foot, I judged it prudent to destroy the effects of the girl Bussod, and those of Pichon and, assisted by my wife, buried them accordingly in the Wood des Rouillonnes.

Now I have told all. I have nothing more to add.

It is almost needless to mention that the two mysterious persons on whom he affected to lay the burden of these atrocious crimes had no real existence. Unable to resist the proof of his own guilt, Dumollard, as Rush before him, saw no hope of escape, save in conjuring up some mythical individual more guilty than himself. And, even had his statement been true, his own confession would have hanged him.

The account against him now stood—

Three women, unknown, murdered and flung into the Rhone.

Murder of Marie Baday, whose body was found in Montaverne.

Murder of an unknown girl, whose skeleton was found in Montmain Wood.

Murder of Marie Bussod, whose body was found in Communes Wood.

Attempts at robbery and assassination on the persons of the women Charlety, Alabert, Bourgeois, Perrin, Fargat, Michel, Pichon, and three others who were unidentified.

Nor is it to be supposed that he by any means confessed to all of his victims. Without dwelling on opinions which carried the number of those actually murdered to twelve, sixteen and eighteen, it may be gathered from hints let fall at intervals by the female prisoner, as well as from the vast accumulation of clothes and the like (among which were

numerous articles which must have belonged to children of nine and ten years old), that those intermediate periods described by Dumollard as presenting "nothing remarkable," were stained with deeds as horrible as any of those confessed to.

The trial commenced on the 29th of January, 1862, at the Assizes of the Ain, sitting at Bourg, the woman Dumollard being included in the act of accusation. It lasted four days.

The proceedings commenced at ten o'clock, under the presidency of M. Marillat, of the Imperial Court at Lyons, the Procureur-General on his right, the Procureur-Imperial on his left, and the magistrates of Bourg, Trevoux and Montluel on the bench behind.

There was a short pause, and the prisoner appeared, escorted by four gendarmes, his wife following.

"There he is! There he is!" murmured the crowd.

"Yes, here I am!" retorted the prisoner, waving his hat, as a popular candidate might at an election.

Dumollard was placed on a bench at a little distance from his wife. He had the appearance of a hale rustic of about fifty; his hair, beard and mustache, thick and dark; his nose aquiline; eyes, blue, round and very prominent; and his whole expression singularly calm and self-possessed. The swelling on his upper lip, by which he had been more than once identified, was very apparent. He had told the jailer that it was occasioned by the sting of a poisonous insect.

At the time of the trial there was considerable popular interest in phrenology and, certainly, from this standpoint, Dumollard's skull presented some interesting features. His head was enormously large at the base, sloping upward and backward, until it terminated almost in a cone. The areas

of destructiveness, circumspection and self-reliance exhibited the most marked development. In front, the skull rapidly receded, the forehead being extremely low. From the base of the nose to the roots of the hair did not exceed three inches. The areas of comparison, causality, ideality and the like, were all but imperceptible, in some instances being actual depressions. In a word, the cruel, brute-like character of his head was due rather to the absence of almost every good feature, than to the extreme development of the bad.

The jury having been impaneled, and two supplementary jurors having been chosen by lot to supply the places of any who might, from illness or other cause, be disqualified from sitting out the trial, the indictment was read.

Hardly had the last word dropped from the officer's lips than Dumollard rose, and beckoned eagerly to his counsel, M. Lardi  re. The latter approached him.

"There is a draught of air somewhere," said the prisoner, "which really annoys me excessively! Can nothing be done to remedy it?"

This important matter being arranged to the prisoner's taste, the list of witnesses, seventy in number, was read aloud, all, save one who was dead, answering to their names.

Next came the interrogatory, which was conducted with dignity and fairness. Dumollard was questioned on his domestic relations.

Your father was a Hungarian?—Yes.

What became of him?—I cannot say. (Then hesitatingly.) If you insist upon my explaining, I will do so.

Certainly. You are here to explain.—My father was well-to-do in his own land. My mother told me that, in 1814, we went into Italy, to Padua. There, my father was taken prisoner by the Austrians. We never saw him again.

As a matter of fact, a story, resting on very substantial proof and fully credited at Trevoux, held that Dumollard's father had been implicated in a plot against the life of the Emperor of Austria. On being recognized at Padua, the unhappy man was hastily tried, and subjected to the punishment of *ecartlement*, in which the culprit is attached to four horses and dismembered.

It is said you have been accustomed to ill treat your wife?—Never. Well, sometimes, when she has plagued me very much, I may have forgotten myself for a moment.

You have been convicted of many offenses?—Once, only.

How, once only? We have here the record of two convictions, at least. You have no means, yet you do no work. You have borne the character of a vagabond, at war with society.—Since I became the associate of those two wretches (his two imaginary principals) it has, indeed, been as you say.

You live in singular privacy, forbidding your wife to know her neighbors, a rule so well observed that, before your arrest, the mayor of your commune knew nothing of you. You returned to your house at unusual hours, using a password, "Hardi," as one of your neighbors will prove.—I may have done so, but not in the sense you mean.

Questioned as to Marie Pichon, the prisoner's account agreed with hers, except that he repeated his assertion that his only object was to frighten her.

But she declares that you strove to strangle her with a cord.—That is false. If I had had such a purpose, I should not have led her to a place where any alarm might be heard.

But why lead her thither at all?—My employers said to me, "Eyes are upon you of which you know nothing. If you betray us, you are lost." That alarmed me.

You have destroyed many of the effects of your several victims. Why have you allowed so many to remain?—I preserved those articles for the sake of the relations of the deceased.

After the last answer there was nothing more to be said! Impudence such as that is near to genius. So, Dumollard being removed, his wife was brought forward. There was nothing especially noticeable in her appearance or manner.

Madame Dumollard stated, in reply to various questions, that her husband had twice brought her articles of dress which he described as having been the property of women he had murdered. She had noticed the blood marks, but had said nothing to her husband, with whom she lived on indifferent terms. He was frequently absent at night, returning before dawn and using a password, as stated. Though cognizant of his guilty practices, she continued to live with him, being completely cowed by his menaces.

The production in court of the stolen effects was the next scene. These were brought forward in two immense chests, bound with iron clasps, and sealed.

*“Ah, tiens!”* murmured the assembly. “Now for the wardrobe of M. Dumollard!”

The articles were sorted and placed in heaps. There were seventy handkerchiefs, fifty-seven pairs of stockings, twenty-seven scarves, thirty-eight caps, ten corsets, nine gowns, and a multitude of miscellaneous objects.

Witness after witness then entered the box, and delivered their testimony with surprising terseness and lucidity. Until the evidence of each was complete, no interruption was offered, unless when the President, observing that the witness was merely corroborating matter already amply deposed

to, recalled the speaker to facts bearing more directly on the case. The trial proceeded rapidly.

The sixth witness, Louis Cochet, was an odd-looking little man, with a very excited manner. He was Dumollard's next-door neighbor. He stated that he had seen the prisoner come home at two in the morning, carrying a trunk.

"He muttered, 'Hardi! Hardi!' at the door, and was let in. The next day I said to Madame (Dumollard), 'Aha! I have got the watchword! I avail myself of Monsieur's absence to call when it suits me!' Then I asked what he did abroad so late? She grew red, and said dryly, 'He has his own affairs.' Oh messieurs!" cried the impressionable little witness, bursting into tears, "I'm fifty-one. I never was in a court of justice before. Now, indeed, I know what frightful *affairs* this neighbor of mine dealt in!"

The seventeenth witness, Dr. Montvenoux, detailed the autopsy on the body of Marie Bussod, stating his belief that she had been buried alive. Here, the prisoner's counsel rose for the first time.

"I desire," he said, "to know the witness's precise reasons for this presumption. We have horrors enough to contend with, without this crowning atrocity. The opinion of the medical witnesses has already created a most painful sensation."

Dr. Montvenoux alleged, as his chief reasons, that the wound was not mortal, or even severe; that a clod of the outer earth, not the subsoil, was clutched in the hand; and that the teeth were set, as if in agony.

The court now adjourned for a few minutes. Dumollard took a huge lump of bread and cheese from his pocket, and began to devour it with the keenest zest. At this moment his eye happened to fall on Marie Pichon, who was moving

through the court. Faithful to his plan of defense, he called out to her:

*“Ah, malheureuse!* But for me you would not be here now! Come and thank me for rescuing you from those villains.” The girl made no reply, but her sister, who was with her, retorted with such warmth and volubility that the dialogue was checked by an officer of the court.

Another curious incident occurred in the waiting room. Marie Pichon, who was evidently regarded as the heroine of the hour, and who was distinguished by a very pleasing face and ingenuous manner, had been prevailed upon by a photographer, sent from Paris, to sit for her picture. Just as she had taken her position, a respectably dressed woman forced her way through the crowd, and running up to Pichon, implored her to forbear, reminding her, in accordance with a popular belief, that all women who have been associated in a marked manner with great criminal processes, such as Nina Lassave, the mistress of Fieschi, came to some sad end.

Marie Pichon started up, *“Ah, mon Dieu!* Monsieur, spare me! Do not put me beside that wretch!” she exclaimed, and was instantly lost in the crowd.

The examination of the fifty-third witness produced a painful scene. This was Josephte Bussod, sister of the murdered girl, who, with two other sisters, appeared in deep mourning and showing the most profound grief. It was necessary that she should identify the garments of the deceased and, as each familiar bit of clothing, stained with blood, was held up in turn, the tears and sobs of the witnesses redoubled. The whole court was affected, only the prisoners preserving their placid calm.

"Do you recollect this dress?" asked the President of Dumollard.

"Oh, perfectly."

"And you, Marianne Dumollard?"

"Of course. I have worn it."

"Have you not also worn a cap with marks of blood?"

"Certainly not! I should have washed it."

"You fully recognize the prisoner?" asked the President of the weeping witness.

"Recognize him!" shrieked the poor girl, wringing her hands in a wild passion of grief. "The miscreant! The monster! He killed my sister—my poor Eulalie! But it is I, too—I that am guilty. Oh, *mon Dieu!* I believed him! I trusted him! I made her go with him—to death—to death!"

She was carried out fainting.

The Procureur-General gave a brief summary of the case, claiming the extreme penalty of the law against both the prisoners.

"One," he concluded, "as the participator in all the robberies, the confederate in the horrors that had preceded them. The other, as an habitual, professed assassin, whose life has been one long outrage and defiance of all laws, human and divine. Steeped in infamy, enemy alike of the living and of the dead, he has made no single pause in his career of crime, nor can any penalty of man's enactment attain the height of his desert."

Dumollard's advocate, M. Lardi  re, followed. The opening of his address was amusingly and typically French and of the period.

In the secluded village of Dagneux, lately so obscure, to-day

so notorious, there stands, fronting the church, a modest tomb, wherein repose all that is mortal of those I loved best on earth—my father and my mother. Since the period that the exigencies of my professional career have forbidden me to kneel at that cherished shrine, memory has daily pictured to me those happy shades, that simple, quiet community, among whom the soft joys of earlier youth were tasted.

This was slightly irrelevant, and the excellent advocate went on, in somewhat less euphonious phrase, to explain that Dumollard, recollecting his name in connection with Dagneux, had written to him, entreating him to undertake his defense.

Perhaps it is a first expiation on the part of this unhappy man that he should have selected my weak aid, instead of that of some more distinguished member of that bar whose hospitality I am now enjoying.

Which was all pleasant and modest enough. M. Ladière made no effort to rebut the evidence, and rested his defense on the ground of those defects in the social structure which cast men like Dumollard loose upon the world from their cradles while, at the same time, the growing aversion to capital punishment weakened the sole barrier by which the passions of such men are restrained. Should, then, society take mortal vengeance for a deed for which it is, itself, in some measure, responsible? A curiously modern point of view.

The counsel of Madame Dumollard, M. Vileneuve, delivered a very long and eloquent address and, having better materials to work with, made a decided impression on the court and jury.

It was four o'clock on the fourth day of the trial when the jury withdrew to consult. The prisoners were removed, and groups forming in every part of the court, eagerly discussed the case. No doubt was felt as to Dumollard. The strongest opponents of capital punishment seemed, on this occasion, to have put aside their prejudices. In illustration of this, a gentleman who had been summoned among the jurors, but who had not been drawn, observed:

"I have never been able to condemn a man to death but, in spite of the scruples I have always felt and expressed as to the inviolability of human life, I would, in this instance, have signed with both hands for the guillotine!"

In the meantime, the individual most nearly concerned was taking refreshment and chatting easily with those around him. He neither spoke nor even looked at his wife, who sat at a little distance, weeping bitterly.

Two hours and a half had elapsed when the door leading to the jury room swung open, and the twelve reentered, the foreman carrying a large scroll, which he handed to the President. There was no need to proclaim silence and, placing his hand on his heart, the foreman began:

"On my honor and my conscience, before God and men, our verdict is—"

"Stay, gentlemen," said the President; "here is something irregular. You have not only to pronounce upon the principal charges, but also to answer Yes or No to each of the aggravating circumstances. Have the goodness to retire and do this."

It took some little time to rectify this informality, and then the jury again made their appearance. The twenty-eight chief questions were, for the most part, supplemented

by other questions, each requiring a separate answer, such as:

With violence?

During the night?

With premeditation?

On the public highway? And the like.

In all, there proved to be sixty-seven affirmative and seventeen negative answers, the former embracing all the material charges.

The effect of this complicated verdict was the conviction of both prisoners with, by a majority, extenuating circumstances in favor of the woman.

For the first time during the proceedings, Dumollard's coolness seemed to desert him. His face became livid, and his eyes glared wildly. For the first time, he appeared to realize his position. There was a dramatic pause, while the court room waited for the sentence, and then the voice of the Procureur-General broke the silence, as he asked the court to grant the application of certain articles of the penal code. The prisoners, called upon to add what they pleased to their defense, made no reply.

Then the President, after reading the articles applicable to the case, pronounced the fatal judgment. Martin Dumollard was doomed to suffer the pain of death, the execution to take place at Montluel. Marianne Dumollard was sentenced to twenty years' imprisonment at hard labor.

That night the condemned murderer slept tranquilly, though for the preceding four his rest had been broken by convulsive tossings.

“Well, Dumollard, how goes it?” said his advocate, entering his cell the next morning.

“As one who expects to die,” was the answer.

"It remains, then, to make a good end. Let that be the first expiation of your crimes."

Neither to such exhortations, nor to the earnest counsels of the excellent Abbé Beroud, vicar of Bourg, who paid him many visits, did Dumollard give any heed.

"I shall do nothing with him," said the priest, mournfully. "The mind is too coarse and brutified. It is not with him as with others, where darkness and light are at least mingled in the soul. Here, it is one profound obscurity."

Nevertheless, he did not relax his efforts and, as Dumollard exercised his right of appeal to the Court of Cassation, there was opportunity for him to do what he could.

Dumollard's cell was shared by four or five other prisoners. These sometimes flattered him with hopes of success in his appeal.

"In twenty days," he answered, "I shall either lose my head or be at liberty, but I would rather die than be sent to Cayenne or even kept in prison."

In saying this, Dumollard was doubly in error. First, in thinking that a certain time must elapse before the execution of a capital sentence and, second, in believing that a favorable decision by the Court of Appeal ends all proceedings, whereas it merely remits the case to a new trial by jury.

On the 27th of February, 1862, his appeal was rejected, the report being accompanied by that recommendation to mercy without which no capital sentence in the France of that time was carried to execution.

The report was then submitted to the Minister and to the Emperor, who wrote upon it "*Il n'y a lieu*," that is, There is no room (*i.e.* for pardon), and the magistrates and officials of Montluel received orders to execute the sentence within

twenty-four hours. The executioner of Grenoble was ordered to assist his colleague of Lyons.

On Friday evening, the 7th of March, the guillotine was taken from the vaults below the Palais de Justice, placed upon an immense car, and transported to Montluel, where a large detachment of Lancers had already proceeded to preserve order among the huge multitudes that came flocking from every part of the country. At four o'clock that same evening, the prisoner was told that he was to die the next day. He turned very pale, but soon recovered his indifference, and only replied that it was what he had expected. His confessor was then introduced, and stayed with him half an hour. As he was about to leave, he suggested to Dumollard that the time had arrived when, if ever, he should exchange forgiveness with his wife, offering at the same time to obtain permission for his release from irons.

Dumollard assented, and the interview took place immediately, the male prisoner remaining calm and unmoved as ever, the woman deeply agitated. After this, the two sat down to partake of their last meal together, an abundant supper, provided at the cost of the good priest who, though it was fast day, permitted them, "in the present conjuncture of circumstances," to eat what they pleased. Of this license Dumollard availed himself to the utmost limit. Beef, pork, cutlets and, especially, puddings, disappeared under his efforts with a rapidity that was amazing. He seemed to consider the time too precious to waste in conversation but, nevertheless, found opportunity, now and then, to address a word or two of comfort to his wife, whose sobs interrupted the repast.

"Patience! Patience! You are fretting about me, but it is a waste of grief. You see that I don't care. As for you,

you have to remain twenty years in prison. Be careful of the little money I shall leave you. Take some wine now and then. But mind! On your liberation, do not go back to Dagneux where your family would not welcome you. Remain at Dijon. By the way," he added, as if struck with an important thought, "don't forget to reckon with Berthet. She owes you for several days' work. That will be seventeen francs, less five sous."

At half past ten at night, the vehicle which was to convey Dumollard to Montluel arrived at the prison. Embracing his wife for the last time, he quietly mounted, accompanied by his confessor and escorted by two gendarmes.

"Ho là!" said the criminal, who seemed to have a peculiar aversion to cold air. "This is very annoying. I am chilled to death!"

"Here, père Dumollard," said a good-natured gendarme, "by a lucky foresight I brought my blanket."

Once made comfortable, the prisoner seemed to desire nothing more. Through the whole length of the ghastly journey, his was the only unruffled spirit in the party. He talked incessantly, quite without effort or bravado, describing the localities, the distance from point to point of places mentioned in the trial and what-not, with a cool minuteness that, under the circumstances, and with the accompaniment of sickly moon-gleams, the howling March wind, and the dull rumble of the carriage struck his companions with awe.

It was half past one in the morning as they entered Chalamont, a mile or two short of Montluel, and here, even at this hour, the crowd had become so dense that there was some difficulty in passing. Yells and execrations were heard on every side. Some women forced their way up to the carriage, and flashed their lanterns in the face of the con-

demned man. The Abbé Beroud warmly remonstrated, rebuking their indecent curiosity, and exhorting them to be satisfied with the act of justice that was about to be done. Thus, through lines of human beings that extended for miles, the *cortège* approached Montluel.

The scaffold had been erected during the night in the widest piece of public ground, the Place Bourgeat, and now stood ready in the center of a perfect forest of bayonets and drawn sabers. Beyond the military square, every visible inch, from the ground up to the chimney-pots, was packed with spectators. Thousands had passed the whole night waiting and watching in the cold.

Dumollard had alighted at the Town Hall, and was warming himself comfortably at the fire in the council chamber. A magistrate who was present urged him to confess whatever remained on his mind, in reference to the crimes for which he was about to suffer. He made no other reply than,

“I am innocent. It is unlucky, but I am sacrificed for the crimes of others.”

Monsieur Carrel, the curé of Montluel, entered.

“Ah, good morning, M. Carrel!” said Dumollard. “I have heard much good of you. It was from your hands that, at sixteen, I received my first communion.”

Some further futile efforts were made to engage him in conversation. One strange answer was noted.

“If others have buried bodies in my vineyard, I am not responsible for that.”

He was offered some refreshment, and took some coffee and Madeira. After this the executioners were introduced, and the *toilette* commenced. The prisoner himself took off his blouse and sat down.

His feet were tied, but not sufficiently to prevent his

walking, and his arms were secured. They then cut off his hair and the neck of his shirt. As the steel of the shears touched him, he gave a convulsive shudder, but he quickly regained his self-command. One final effort to obtain confession, or at least an admission of his guilt, met with the former result, and this extraordinary offender, persevering to the last in his war with society, marched forth to his fate.

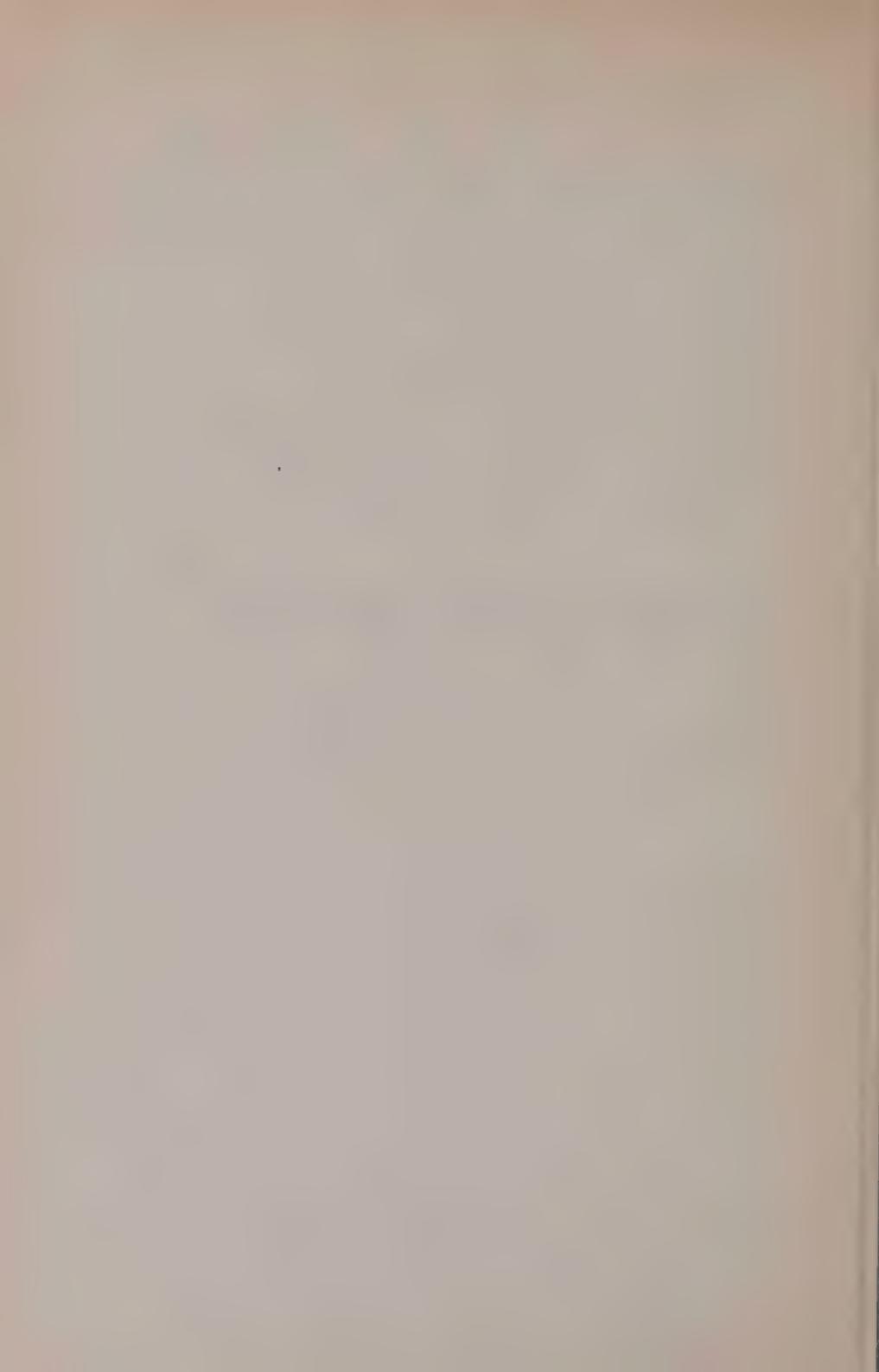
The shout that split the air as he appeared, might have been heard for miles. The deathly silence that followed it, was even more appalling. Dumollard's lips moved, as if in prayer. The priests bent forward, and managed to catch the words, which they earnestly reëchoed.

“Jesus! Marie! Pray for me!”

He knelt for a moment on the lower steps of the scaffold, and the Abbé Beroud offered to his lips, now white, the symbol of divine mercy. Then the executioners helped him up the remaining steps, tied him to the plank, and pushed the latter quickly into place. Quick as lightning, the ax descended and, in a few minutes, the head and body lay together, yet separate, in a rude coffin.

The body was interred in an obscure nook in the cemetery at Montluel. The head was sent to the phrenological professors at Lyons. The guillotine had worked well. There had been scarcely time for the blood to show. The wolf was dead.

# WITCHCRAFT IN TENNESSEE



## WITCHCRAFT IN TENNESSEE

*The Trial of John Thomas Scopes for Violating the Anti-Evolution Statute of the State of Tennessee. Before the Eighteenth Judicial Criminal Court of Tennessee. Judge J. T. Raulston Presiding. July 10th, 1925.*

JULY is very apt to be a hot month in the United States, and the July of 1925 was no exception. In the little town of Dayton, Tennessee, the heat waves flickered and trembled, and the Rhea County Court House resembled closely the famous Black Hole of Calcutta. But the heat of summer was as nothing compared to the fires of prejudice that burned brightly in that same town and under that same roof.

The statute which Scopes was charged with violating was passed on the first day of Spring, March 21st, 1925. It read:

Be it enacted by the General Assembly of the State of Tennessee; That it shall be unlawful for any teacher in any of the universities, normals, and all other public schools in the State, which are supported in whole or in part by the public school funds of the State, to teach the theory that denies the story of the divine creation of man as taught in the Bible, and to teach instead that man has descended from a lower order of animals.

The author of this absurdity, a farmer by the name of John Washington Butler, is reported to have said later, "I never had any idea that my bill would make a fuss. I

just thought it would become a law, and that everybody would abide by it." Little did John Washington know! Mr. Butler further volunteered, "If I had it all to do over again, I'd have introduced it two years earlier—in my first term in the Legislature. I didn't know anything about evolution when I introduced it. I'd read in the papers that boys and girls were coming home from school and telling their fathers and mothers that the Bible was all nonsense. I didn't think that was right, and then the Rev. W. J. Murray, of Nashville, who comes to preach once a month in our church in Lafayette, the Primitive Baptist Church, came over one Sunday and preached a sermon saying the teaching of evolution in the schools ought to be stopped, because it was attacking religion. When the bill passed, I naturally thought we wouldn't hear any more about evolution in Tennessee." The sublime faith in legislation indicated by that last sentence is worthy of the type of mind that brought into being the 18th Amendment of the Federal Constitution.

Quite possibly nothing more would have been heard of evolution in Tennessee had it not been for a certain gentleman of liberal ideas, with convictions on the rights of man, who resolved to test the constitutionality of the law. This was Dr. George Rappleyea of Dayton, whose ancestors had been expelled from France because they desired to worship in their own way, and whose blood had not been thinned by the enervating atmosphere of small town America.

Accordingly, Dr. Rappleyea investigated. He found first, that his friend, Mr. Scopes, had used in his high school class a text book on biology that contained matter which appeared to violate the statute; second, that Mr. Scopes was willing to offer himself as a test case; and third, that the American Civil Liberties Union was ready to finance the

defense. Forthwith, Dr. Rappleyea swore out a warrant against his friend, who was promptly indicted by the Grand Jury for teaching evolution.

By this time the affair was getting ample publicity, for the story was good copy and the summer is often a dry time for news. Mr. Scopes had gone to New York to consult with the Civil Liberties Union, and had made an excellent impression. He was only twenty-four, but he kept his head admirably. The next step was the introduction of William Jennings Bryan into the case. Mr. Bryan offered his services to the prosecution, on the theory that the Tennessee Legislature might have been influenced in its action by his own anti-evolution resolution which had been passed in Florida. Bryan, to the liberals, was as a red rag to a bull. Clarence Darrow, probably the most noted criminal lawyer in the United States, promptly volunteered for the defense, where he was joined by Dudley Field Malone of New York.

Counsel for the defense finally consisted of Mr. Darrow, W. M. Thompson, Mr. Malone, Arthur Garfield Hays, and John R. Neal, a native of Rhea County.

The prosecution counted Mr. Bryan and his son, W. J. Jr., Attorney General A. T. Stewart, "General" Ben B. Mackenzie of Dayton, the General's son, the Hicks brothers, and County Judge J. T. Mackenzie.

Judge J. T. Raulston presided. A special term had been called for the case, and Dayton was in a twitter of excitement. And so, for that matter, was the rest of the country. The little county seat was filled to overflowing with newspaper men from the four corners of the country and some from abroad, press photographers and motion picture men, feature writers and artists. It was crowded, and it was hot, very hot indeed. In consequence of this last, Mr. Bryan

was seen in his shirt sleeves and with a palm leaf fan; Mr. Darrow openly displayed his blue braces as he shed his coat, and the defendant wore his shirt open at the neck and with the sleeves rolled up. Almost literally, the warriors had stripped for battle.

The court opened with prayer, a distinct novelty to the visiting attorneys, and the fight was on.

First, Scopes had to be reindicted, because of a flaw in the original indictment. A new Grand Jury was sworn, the court read them the statute and the first chapter of Genesis, and before noon they had returned with the new indictment. The moot point of expert witnesses now arose. Mr. Darrow requested information from the prosecution that would enable him to send for his experts at the most opportune time. The State, through Mr. Stewart, vigorously objected to the introduction of experts, and finally agreed to take up the matter out of order on the following Monday—the case opened on Friday—preferring to select the jury first.

The examination of Jim Riley, the third juror, is sufficiently typical to be cited as an example, though in justice both to Mr. Riley and to the rest of the jury it must be confessed that his colleagues only combined a greater degree of literacy with a higher percentage of prejudice.

Mr. Riley was sworn by the court, and examined on his *voire dire*, the court asking the following routine questions:

Mr. Riley, are you a householder or freeholder in Rhea County?  
—Yes, sir.

Are you related by blood or marriage to Walter White, the prosecutor, or to John T. Scopes, the defendant, in this case?—No, sir.

Have you formed or expressed an opinion as to the guilt or innocence of the defendant?—No.

And you have no definite opinion about it?—No, not anything about the facts at all; no, sir—not only just what I heard.

Just rumor talk?—Yes, sir.

You did not talk to any witness that undertook to tell you what the facts were?—No, sir.

And you can go into the jury box and try the case wholly on the law and the evidence, disregarding any impression or opinion that you might have, and render a fair and impartial verdict to both sides?—Yes, sir.

THE COURT.—Competent juror.

MR. MACKENZIE.—Pass him to you, colonel.

In thus indicating his desire not to question the talesman, Mr. Mackenzie made use of a title in addressing Mr. Darrow that was continued throughout the trial by both the prosecution and the court. The "Kentucky Colonel" is proverbial, and the brevet is likely to be bestowed on any one considered worthy of the attention, such as Mr. Darrow and the peaceful Mr. Bryan. Incidentally, the prosecution took the trouble to examine very few prospective jurors, knowing, as it did, that nine out of every ten men in Rhea County could be trusted to side against modernism from dawn to sunset. The whole atmosphere was utterly hostile to the defense from the outset, public opinion being violently on the side of Jonah, the Whale and Mr. Bryan. Mr. Darrow now began his interrogation of Jim Riley.

Mr. Riley, you are a farmer?—Yes, sir.

How far from Dayton do you live?—Just at the lower edge of town.

You have lived in Dayton—you have lived in this county, for many years?—Yes, sir.

Do you know Mr. Scopes?—I just know him. I just saw him once—just one time.

Are you a member of any church?—Yes, sir.

What one?—Baptist.

You have been a member of the Baptist church for a long while?—Yes, sir.

Do you know anything about evolution?—No, not particularly.

Heard about it?—Yes, I have heard about it.

Know what it is?—I don't know much about it.

Have you any opinion about it—prejudice? Have you any prejudice against the idea of evolution? You understand my question—what I mean by prejudice, don't you? If you don't, I will make it easier.—No, I have no prejudice.

And you have heard that Scopes here has been indicted for teaching evolution?—Yes, sir, I have heard that.

And you have no prejudice against it?—I don't know the man—wouldn't know him if I was to meet him out on the road at all—just saw him one time.

I mean, have you any prejudice on account of his having taught evolution, if he did teach it?—Well, I couldn't tell you about it, because I don't know what he taught.

Have you any feeling that it is a wrong teaching at this time?—Well, I haven't studied very much about it.

Ever talk to anybody about it?—None to amount to anything, no, sir.

Ever heard anybody preach any sermons on it?—No, sir.

Ever hear Mr. Bryan speak about it?—No, sir.

Ever read anything he said about it?—No, sir; I can't read.

Well, you are fortunate. You can be a perfectly fair juror, can't you?—Yes, sir.

And you will be, if taken as a juror?—Yes, sir.

THE COURT.—What do you say for the State?

MR. MACKENZIE.—Sit down, Mr. Riley.

THE COURT.—Have a seat, Mr. Riley.

And so Jim Riley passed with flying colors. During its examination of the fifth juror, R. L. Gentry, the defense forecast its intention to prove that, actually, there was no conflict between the theory of evolution and the Bible.

MR. DARROW.—Have you formed an opinion as to a conflict between the Bible account of man's origin, and evolution?

MR. GENTRY.—I have.

MR. DARROW.—Your Honor, I don't believe a man could study evolution and the Bible and believe there is any conflict.

JUDGE RAULSTON.—I anticipate that question will arise.

MR. DARROW.—I only want to keep the Court from getting set on that point.

JUDGE RAULSTON.—The Court is only going to get set on his chair for the present.

The jury as finally completed consisted of six Baptists, four Methodists, one member of the Disciples of Christ, and one gentleman who had no church. There were ten farmers, one shipping clerk and one land owner.

This filled most of the first day and, after a few exchanges between opposing counsel, court was adjourned over the week end. Saturday and Sunday were turbulent. Both sides issued statements to the press, and Mr. Bryan made two addresses. One incident deserves especial notice.

The Rev. Howard G. Byrd, rector of the Methodist Episcopal Church North, had invited the Rev. Charles Francis Potter of New York, well known as an anti-Fundamentalist, to occupy his pulpit that Sunday. Dr. Potter accepted. Mr. Byrd thought it only fair that both sides should be heard. The enlightened congregation of the Methodist Episcopal Church North had other views. One of the woman members told the rector that they would

break up the church if he allowed "a New York infidel" to fill the pulpit. Later a mob composed of members of the flock went to Mr. Byrd's parsonage and threatened to wreck the church if Dr. Potter preached. Whereupon, Mr. Byrd resigned from the pulpit, and announced his intention of entering some field of activity where a little more freedom of expression was permitted.

Monday was still hot, and the crowd that filled the court room had wisely adapted their costumes to the weather, as had various of the counsel on both sides. The room was packed, and a microphone had been installed so that the second crowd which stood outside on the lawn could follow the proceedings.

The court opened, as usual, with prayer, following which the prosecution reexamined one of the jurors, the jury not yet having been sworn, because of a report that he had expressed an opinion as to the guilt of the accused. This juror, Mr. Gentry, finally established his innocence, and the proceedings opened.

Especially during the second and third days of the trial an incessant battle of technicalities raged between the opposing counsel, and the fact that the leading lawyers for the defense were not familiar with the procedure used in Tennessee did not simplify matters. Mr. Stewart, for the prosecution, read the indictment, and the defense, through Mr. Neal, made a motion to quash. Mr. Neal read this motion which held that the anti-evolution statute was in violation of both the State and Federal Constitutions. During the course of his argument, Mr. Neal contended that the Butler statute "places the public schools of our state in such a situation, in regard to particular church establishments, that they contravene the provisions of our Constitution." The prosecu-

tion evidently saw rocks ahead, for they immediately, at this point, requested that the jury be permitted to retire.

MR. DARROW.—I object to the jury retiring.

MR. STEWART.—It don't make any difference whether you object or not. It is a matter that addresses itself to the court. I ask your honor to let the jury retire.

MR. NEAL.—State why. The jury has got to be the judge of the law and the facts in this case, and this is up to the jury.

MR. STEWART.—You are not here under a plea of not guilty, and the case is not before the jury.

MR. NEAL.—We are here with our motion before the jury, and we have got a right to state our motion, since the jury will be the judge of the law and the facts. We will have to go over it again anyway, and it is the same matter that we will present in the opening statement.

MR. STEWART.—There is no issue before the jury. There is nothing for the jury to consider.

MR. NEAL.—Then what is the harm in having them here? It is the same jury that will try the case.

MR. STEWART.—That is the harm in having them here. I ask your honor to let the jury be discharged.

MR. NEAL.—The jury is the judge of the law and the facts.

MR. STEWART.—Oh, that is all foolishness!

THE COURT.—The Court will be more at ease with the jury not present.

MR. DARROW.—We will be less at ease.

THE COURT.—Let the jury retire.

Mr. Neal continued his argument on the motion to quash the indictment and, following him, came Mr. Hays. The prosecution replied, via Mr. Mackenzie, and the dispute now became somewhat personal in that the prosecution alleged that "foreign" lawyers were coming in and trying to

upset the laws of Tennessee. To this argument Mr. Malone objected bitterly, but the Court assured him Mr. Mackenzie "is in a good humor." The interchange did not stop at this for, on the Court saying that "I want you gentlemen from New York or any other foreign state, to always remember that you are our guests, and that we accord you the same privileges and rights and courtesies that we do any other lawyer," Mr. Malone very properly replied that "We want it understood that while we are in this court room we are here as lawyers, not as guests." After which, Mr. Mackenzie continued on his way. In fact, he continued well into the afternoon, and while an occasional spat served to increase the heat of the debate, nothing of major importance was educed. The day closed with a somewhat lengthy speech by Mr. Darrow in favor of the motion, in which he took the modern view on evolution, and a liberal view on teaching. It was a good speech, containing nothing that any person of intelligence and ordinary education did not know before, and so was peculiarly unadapted to most of his audience.

Court opened on the third day with acrimony instead of prayer.

THE COURT.—Rev. Stribling, will you open with prayer?

MR. DARROW.—Your honor, I want to make an objection before the jury comes in.

THE COURT.—What is it, Mr. Darrow?

MR. DARROW.—I object to prayer, and I object to the jury being present when the court rules on the objection.

MR. STEWART.—What is that?

THE COURT.—He objects to the court being opened with prayer, especially in the presence of the jury.

Mr. Darrow claimed that the prayers that had been offered were prejudicial to the defense, and tended to influence the jury improperly. The controversy was bitter. Mr. Stewart, with more truth than manners, spoke of the "agnostic counsel for the defense," at which Mr. Malone rose in his wrath to proclaim that he, for one, was no agnostic, and that he objected to the prayers as helping "to increase the atmosphere of hostility to our point of view which already exists in this community by widespread propaganda." And so it went, back and forth, until the Court ruled that prayers were in order, Mr. Darrow took an exception to the ruling, and the Rev. Mr. Stribling prayed. The defense then requested that the record might show on every morning thereafter on which prayer was made that they objected and took an exception to the ruling.

Court now adjourned to one o'clock in order to give Judge Raulston time to finish writing his opinion on the motion of the defense to quash the indictment.

The afternoon session was almost as brief as that of the morning but it was enlivened by two incidents that seem worth recording.

MR. HAYS.—Before your honor presents a decision or the proceedings go further, may I present a petition to the court, addressed to the Hon. John T. Raulston, presiding judge, Rhea County Court: "We, the following-named representatives of various well known religious organizations, churches and synagogues, do hereby petition your honor that if you continue your custom of opening the daily sessions of the court of Rhea County with prayer—"

MR. STEWART.—Your honor, just a minute, I submit that this is absolutely out of order.

MR. HAYS.—Mr. Stewart—

MR. STEWART.—This is not an assembly met for the purpose of hearing a motion of that sort. Your honor has passed upon the motion.

MR. HAYS.—I insist upon making this motion!

MR. STEWART.—I am making my exception to the court. Will you please keep your mouth shut!

MR. HAYS.—Will your honor hear my motion?

MR. STEWART.—I am making my exception to the court!

THE COURT.—I will hear it.

MR. STEWART.—It is entirely out of order; and I except to it with all the vehemence of my nature!

THE COURT.—I will hear it. Proceed, Mr. Hays.

Mr. Hays then read a petition signed by two Unitarian ministers, one rabbi and one Congregationalist, requesting that if the daily prayers be continued some clergymen other than Fundamentalists be permitted to alternate. The Court referred this to the "Pastors' Association" of Dayton. The crowd, knowing that this association was composed largely of Fundamentalists, laughed and cheered.

THE COURT.—Now, I have a very serious matter to speak of. I dictated my opinion in this case [*that is, his opinion on the motion to quash his indictment*], which is lengthy. I have been about some four hours in the preparation of the opinion. I gave it to the court stenographer, a reputable court stenographer, in secret, with the instruction that no living person know anything as to the conclusions I had reached, until I had begun to read my opinion from the bench. I have not intimated to any living soul what my opinion was, except to the stenographer who took the decision. I am now informed that newspapers in the large cities are being now sold, which undertake to state what my opinion is. Now any person that sent out any such information as that, sent it out without the authority of this court, and if I find they have cor-

ruptly secured said information I shall deal with them as the law directs. Now on account of this improper conduct, apparently at least improper conduct, of some person or persons, the Court has decided to withhold his decision until to-morrow morning and, to-morrow morning, after the opening of the court, the decision will be read. Now I want, when the crowd is gone from the court room—I want all the members of the press to meet me in this court room. I want to talk with them about this matter. If I find that some representative here has used stratagem or has used any corrupt means or has, in any manner, secured my opinion, or as to the result of it, and sent it out, I shall promptly deal with him, and of course excuse him from any further presence in the court room. So, when the crowd is gone I desire that the newspaper men stay with me.

The court then adjourned until the following morning, and the judge, along with the attorneys for both sides and the newspaper men, went into conference. Judge Raulston then read a telegram:

St. Louis *Star* out final carrying story law been held constitutional by judge.

A committee of newspaper men was appointed by the Court to investigate the matter, and report as soon as possible.

The Pastors' Association had very fairly asked Dr. Charles Francis Potter to open with prayer the next morning, and pray Dr. Potter did. Mr. Neal then renewed the objection of the defense to the introduction of prayer, and the prosecution replied heatedly. Mr. Stewart apologized for telling Mr. Hays to keep his mouth shut, the day before, and Mr. Hays accepted the apology. Whereupon, Mr.

Neal insisted that Mr. Stewart further apologize for calling Mr. Darrow an agnostic and an infidel, and Mr. Stewart refused to meet this demand. It was the fifteenth of July, and hot, and the issue was provocative.

The press committee which was to investigate the supposed leak then reported. Mr. Beamish, the chairman, asserted that the information had not been secured improperly, and that there was nothing for the Court to act on. Judge Raulston then asked precisely how the information had been secured.

MR. BEAMISH.—The circumstances are, that the young man who sent the message met the judge on his way to the hotel. The judge, I am informed, had a bundle of papers under his arm. The young man asked him if that was his decision. The Court replied, No, that the decision was being copied by a stenographer. The next question was, Will you read that decision this afternoon? The reply was, That is my intention. The next question was, Will you then adjourn until to-morrow? To which the reply was, Yes, I think so. The inference was that if the motion to quash the indictment had been refused, there would be an adjournment. If the motion to quash was affirmed, the trial would be ended. It was pure deduction.

The reporter who did this clever bit of deductive reasoning was William K. Hutchison of the International News Service. He was called before the Court and mildly admonished.

Mr. Darrow now rose to comment further on Mr. Stewart's characterization of him as an agnostic and an infidel. He said that he was an agnostic and proud of it, and that infidel was a meaningless word in a debate of this kind. The Court asked Mr. Stewart whether he wanted to reply,

and Mr. Stewart replied briefly and ungraciously. The Court then read its opinion on the motion to quash the indictment. It was a flat refusal, amply bearing out Mr. Hutchison's story. The defense, naturally, excepted.

When court reconvened in the afternoon, the jury, which so far had been conspicuous chiefly by its absence, was put into the box. The prosecution was ready to open its case, and the Judge announced that both sides would sum up the issues in opening statements. At this juncture—

JUROR THOMPSON.—If it ain't out of order, I would like to make the request, the unanimous request of the jury, to take up the matter of some electric fans here. This heat is fearful. While I think I could stand my part of it—

THE COURT.—The County Judge is the man you would have to appeal to on that.

JUROR.—He is a mighty nice man, but some intimation from you might do some good.

MR. MACKENZIE.—Nothing would give me greater pleasure than to have them installed, but on account of the depleted state of the treasury I do not believe the County can do it.

MR. MALONE.—I will buy some fans.

THE COURT.—Col. Thompson, I will divide my fan. Perhaps we can borrow some small fans, and place them on the table, Mr. County Judge.

The defense then entered its plea of Not Guilty. Mr. Stewart opened for the prosecution in a very brief statement, and Mr. Malone followed him for the defense. Shortly, Mr. Malone contended that the prosecution must prove not only that Scopes taught evolution, but that the theory of evolution was in direct denial of the Biblical story of crea-

tion. He asserted that there was no actual conflict between science and Christianity, and pointed out that it was impossible to hold the Bible as a criterion of scientific values. During the course of his speech, Mr. Malone quoted from earlier statements of Mr. Bryan, which were couched in rather liberal terms, and this subjected him to a running fire of objection from the prosecution. Finally, the Court sustained the objection, although Mr. Bryan himself remarked that he needed and desired no protection.

The State now called its first witness, Superintendent White of the Dayton public schools. The gist of his testimony was that Mr. Scopes had admitted to him that he had violated the law by teaching evolution, and that he had found the defendant satisfactory as a teacher. On cross-examination Mr. White admitted, in his turn, that the book that Scopes had used, Hunter's "Civic Biology," had been specified for school use by the State School Book Commission. At this point the prosecution offered a Bible in evidence, as being explanatory of what the Act related to when it said "Bible." Mr. Hays was on his feet at once objecting that there were many Bibles besides the King James version, and that the Act failed to specify which Bible was intended. The objection was overruled, however, and the Bible was admitted entire.

The State now called Howard Morgan, a fourteen-year-old boy, a pupil of Mr. Scopes. Master Morgan testified that the defendant had taught his class that:

In the beginning the earth was too hot for any life. It had cooled off. Then the sea and land were formed. Plant life in the sea began with a one-celled animal, which finally evolved until it got bigger and a land animal, and then got to be man.

Howard said the the teacher had classified man as a mammal, but cross-examined by Mr. Darrow he was not sure just what had been intended by the word classified.

MR. DARROW.—He didn't say a cat became a man, did he?

HOWARD.—He said that man had reasoning powers, and the other animals didn't.

MR. DARROW.—There's doubt about that, but we'll let it pass if he said it. (*Laughter.*) Did he tell you that mammals were cats, dogs, elephants, horses and whales?

HOWARD.—I don't know about whales.

MR. DARROW.—Never saw a whale suckle its young?

HOWARD.—No, sir.

MR. DARROW.—Did he ever tell you anything else wicked?

HOWARD.—No, not that I remember of.

MR. DARROW.—He said the earth was once a molten mass of liquid, didn't he?

HOWARD.—Yes, sir.

MR. DARROW.—And that after it got cooled off enough, and the soil came, that plants grew. Is that right?

HOWARD.—Yes, sir.

MR. DARROW.—And that the first life was in the sea?

HOWARD.—Yes, sir.

MR. DARROW.—And that it developed into life on the land?

HOWARD.—Yes, sir.

MR. DARROW.—And finally into the highest organism, which is known as man?

HOWARD.—Yes, sir.

MR. DARROW.—It hasn't hurt you any, has it?

HOWARD.—No, sir.

MR. DARROW.—That's all.

Another pupil, Harry Shelton, seventeen, testified along precisely similar lines, and replied on cross-examination that

he was still a member of the church and that the fact that he had been taught evolution had not alienated him from religion. Then the local druggist, F. E. Robinson, testified that he had sold Hunter's Biology for several years, though he admitted he was a member of the School Board, and, in reply to a question of Mr. Darrow's, said that he had not noticed any signs of moral deterioration in the community in consequence. It was in Robinson's drugstore that the whole affair started in a discussion between Scopes, Robinson and Rappleyea. Mr. Darrow read at some length from the textbook in question, and the State responded by reading the first two chapters of Genesis. Whereupon the State rested its case.

The witnesses for the defense were all experts in various branches of science. The first one called was Dr. Maynard M. Metcalf, a member of the Congregational Church and of the faculty of Johns Hopkins University. Dr. Metcalf was a zoölogist.

MR. DARROW.—Are you an evolutionist?

WITNESS.—Certainly. Under other circumstances I should consider that an insult.

MR. DARROW.—Do you know any scientific man in the world who doesn't believe in evolution?

This being objected to, Dr. Metcalf was questioned in an undertone for the record. He admitted that while there were various theories of evolution he knew of no scientist who questioned the fact of evolution itself.

MR. DARROW.—Will you state what evolution is as regards to man?

MR. STEWART.—We shall except to all testimony bearing on the descent of man from an evolutionary viewpoint, and to all testimony that bears on the conflict between the Bible and evolution.

MR. DARROW.—What! Is this jury, only one of whom may be presumed to have read about evolution, expected to pass on this question without being told what it is?

The Court here excused the jury, and the examination continued under an agreement that the witness could testify on evolution to a point which would enable the Court to feel qualified to rule on the admissibility of expert testimony of this nature. The rest of the day was accordingly occupied with Dr. Metcalf's testimony which brought out, under Mr. Darrow's questioning, an outline of elementary evolution which is supposedly familiar to every schoolboy to-day in States where it is permitted to be taught.

The fifth day, Thursday, was devoted exclusively to a fight on the admissibility of scientific testimony. Dr. Metcalf went back on the stand, but he did not stay there long. The State made formal objection to the examination of experts and the question was argued pro and con, with increasing heat on both sides. Mr. Bryan junior flung himself into the breach with a speech in which he voiced his distrust of all experts, pointing out the fact that expert witnesses could not be indicted for perjury and citing various precedents in support of his contention. Mr. Hays followed him with more and, doubtless, better precedents, and counsel locked horns in a bitter and long-drawn wrangle as to the exact meaning of the statute. During the course of this the following colloquy ensued:

MR. MACKENZIE.—They are seeking to reconcile it (*the Bible and evolution*) if your honor please, and then they come right along and prove by the word of mouth of their scientist that when God said He created man in His own image, created him out of the dust of the ground, and blew into him the breath of life, and he became as a living creature—they want to put words into God's mouth and have Him to say that he issued some sort of protoplasm, or soft dish rag, and put it in the ocean and said, "Old boy, if you wait around about six thousand years I'll make something out of you."

MR. DARROW.—Let me ask a question. When it said, "in His own image," did you think that meant the physical man?

MR. MACKENZIE.—I am taking the divine account, "He is like unto Me."

MR. DARROW.—Do you think it is so?

MR. MACKENZIE.—I say that, although I know it is awfully hard on our Maker to look like a lot of fellows who are profusely ugly, to say he favored the Master.

MR. DARROW.—You do think the physical man is like God?

MR. MACKENZIE.—Why yes, I do and I will give you my reason.

MR. DARROW.—And when you see man, you see a picture of God?

MR. MACKENZIE.—Like unto Him and made in His image. And the reason why I believe that firmly is because the Bible teaches it. And I believe in the virgin birth of Christ!

While it is impossible to follow Mr. Mackenzie through all his gyrations, just a bit more may not be out of place.

MR. MACKENZIE (*to Mr. Hays*).—Do you believe the story of divine creation?

MR. HAYS.—That is none of your business.

MR. MACKENZIE.—Then don't ask me any more impertinent questions!

THE COURT.—I do not think that Colonel Hays's answer to General Mackenzie was as courteous an answer as he should give in this court.

Apparently, the attorneys for the State were all generals, and those for the defense colonels!

MR. HAYS.—That is so. Instead of those words, I will say that I think it doesn't concern General Mackenzie.

MR. MACKENZIE.—I will say to you that I have as little concern as to where you emanated from, or as to where you are going, as any man I ever met!

MR. HAYS.—Now may I ask for an apology, your honor?

THE COURT.—Yes, sir.

MR. MACKENZIE.—I didn't mean to give offense. I beg your pardon.

MR. HAYS.—It is like old sweethearts making up!

MR. GORDON MACKENZIE.—We have some ceiling fans coming. I want to ask your honor to adjourn a little early, and let them put the fans in.

THE COURT.—We will adjourn until 1:30.

On the afternoon of this day William Jennings Bryan, Sr., made his one speech of the trial in opposition to expert testimony. It was at this juncture, as Mr. Hays tells, that Bryan arose and "absolutely and unequivocally refused to be a mammal" and, as one of the reporters remarked "according to Darrow's test, perhaps Bryan was right; for he neither had hair nor did he suckle his young." Mr. Bryan was a remarkable character. He was a bigot and a demagogue; he was ignorant, parochial, narrow minded and reactionary. He had been a bad statesman, if he could be called a statesman at all, and an unsuccessful politician.

But he was a very long way from being a fool. He knew mob psychology as well as he knew his A.B.Cs, and the mob adored him. He had all the catch-penny tricks of the political shyster but, being honest, he used them honestly. He never disdained a baby-kissing campaign. Bearing all this in mind, his speech was a rather remarkable production. In every other sentence he begged the question, but never for an instant did he lose his hold on his audience. It did not matter whether his points were good or bad; they were so perfectly adapted to his listeners that they were effective. As a stump speaker, a popular orator, the man was a genius. This will be seen later in his cross-examination. For the present, while it is impossible to reproduce his speech here, one minor digression is effectively characteristic.

What does the law teach, my friends? We have little Howard Morgan—and, your honor, that boy is going to make a great lawyer some day. I didn't realize it until I saw how a fourteen-year-old boy understood the subject so much better than the distinguished lawyer who attempted to quiz him. The little boy understood what he was talking about and, to my surprise, the attorney didn't seem to catch the significance of the theory of evolution and he thought—and I'm sure he wouldn't have said it if he hadn't thought it—he thought that little boy was talking about individuals coming up from one cell.

One can be sure that the proud parents of young Howard were convinced that Mr. Bryan was the greatest lawyer in the world and, probably, the rest of Dayton was not far behind them. That was the man—an astute flatterer of the herd, who gloried in the title of the Commoner, and who richly deserved the appellation.

In the course of his speech, Mr. Bryan came very near to finding a vulnerable spot in Mr. Darrow's armor. In 1924, Darrow had defended Leopold and Loeb, two Chicago boys who were convicted of murder. Modern philosophy and psychology had played a strong part in the case, and Mr. Darrow had been forced by circumstances to take a somewhat extreme point of view. His chickens now came home to roost, for Mr. Bryan quoted from his defense of Leopold and Loeb in such a way as to make some of his argument for Scopes appear invalid. Naturally, Mr. Darrow objected, but Mr. Bryan carried his point nevertheless. Indeed, in going over the trial record, one cannot but feel that Bryan far out-matched Darrow in cunning; again and again the orator scored off the lawyer with an uncanny knack of sensing the phrase that would exert the strongest popular appeal. To say that Nietzsche praised Darwin, and then to remark that Nietzsche was an atheist and died insane, is not to condemn Darwin or his theories but, with the un-thinking, it is a good platform point. Darrow and Malone both replied to Bryan, but their appeal to reason and common sense was much less acceptable than Bryan's flowery prejudice. Following this, the Court took a hand in the proceedings and questioned Mr. Darrow, in an effort to make him define more rigidly just what he did and did not believe, but nothing of radical importance was brought out. Mr. Darrow's beliefs appear to be those of the average intelligent person, no more, no less. The closing speech on the admission of expert testimony was made by Mr. Stewart. One extract will suffice to show its character:

I say, bar the door and do not allow science to enter. That would deprive us of all the hope we have in the future to come.

And I say it without any bitterness. I am not trying to say it in a spirit of bitterness to a man over there. It is my view; I am sincere about it. Mr. Darrow says he is an agnostic. He is the greatest criminal lawyer in America to-day. His courtesy is noticeable—his ability is known—and it is a shame, in my mind, in the sight of a great God, that a mentality like his has strayed so far from the natural goal that it should follow. Great God, the good that a man of his ability could have done if he had aligned himself with the forces of right, instead of aligning himself with that which strikes its fangs at the very bosom of Christianity!

The Court adjourned until the next day.

The session on the sixth day of the trial was short but lively. After the usual prayer, Judge Raulston read his decision excluding the evidence of experts. This was a sore blow to the defense and Mr. Darrow, for one, was unable to take it gracefully. It is almost incredible that a lawyer of Mr. Darrow's ability and experience should have permitted himself the luxury of losing his temper but, during the course of this trial and especially on this day, Mr. Darrow definitely injured his cause by a display of spleen that is as understandable as it was injudicious. After Judge Raulston's ruling had been read, Mr. Hays entered his exception for the defense in language more forthright than discreet.

MR. HAYS.—Your honor will permit me to take an exception? To state my grounds of exception? We say that it is a denial of justice not to permit the defense to make its case on its own theory.

THE COURT.—You mean the State?

MR. HAYS.—No, sir, not to permit the defense to make its case on its own theory. I say further that it is contrary to every

element of Anglo-Saxon procedure and jurisprudence to refuse to permit evidence as to what evolution is and what it means, and what the Bible is and what it means. Take my exception on the further ground that for the Court of Rhea County to try to determine whether or not this law is unreasonable, without informing itself by evidence, assumes plenary knowledge on a subject which has been the study of scientists for generations, and for these reasons, and those placed on the record yesterday, the defense most respectfully excepts.

THE COURT.—Let the exception be entered on the record.

MR. STEWART.—I desire to except to exceptions stated in this manner! Such a procedure is unknown to the laws of Tennessee, and I except to the manner in which the counsel for the defense excepts to the Court's ruling. I think it is a reflection on the Court.

THE COURT.—Well, it won't hurt this Court.

MR. STEWART.—I think there is no danger of it hurting the Court, for that matter.

MR. DARROW.—There is no danger of it hurting us!

MR. STEWART.—No, you are already hurt as much as you can be!

MR. DARROW.—Don't worry about us. The State of Tennessee doesn't rule the world yet. With the hope of enlightening the Court as a whole, I want to say that the scientists will probably not correct the words, "descent of man," and I want to explain what descent means, as starting with a low form of life and finally reaching man.

Judge Raulston had remarked in his ruling that, "I desire to suggest that I believe evolutionists should at least show man the consideration to substitute the word 'ascend' for the word 'descend.'"

MR. STEWART.—We all have dictionaries.

MR. DARROW.—I don't think the Court has one.

MR. STEWART.—I think the Court knows what descent means, all right.

MR. DARROW.—We will submit your honor's request to the Association of Scientists.

THE COURT.—I think the Court understands some things as well as the scientists.

This was not only all very silly and childish but, especially so far as Mr. Darrow was concerned, plain bad manners. It served only to prejudice his case, and availed him nothing.

It was finally agreed that the statements of the expert witnesses should be put in the form of affidavits, and read into the record for the purpose of review by the higher court. Mr. Bryan was very anxious to know whether he would be allowed to cross-examine the experts, but it was made clear to him that this was impossible. Following this came the remarkable colloquy that proved Mr. Darrow's downfall.

MR. DARROW.—Counsel well knows what the judgment and verdict in this case will be. We have a right to present our case to another court, and that is all we are after. They have no right whatever to cross-examine any witness, when we are offering simply to show what we expect to prove.

THE COURT.—Colonel, what is the purpose of cross-examination?

MR. DARROW.—The purpose of cross-examination is to be used on the trial.

THE COURT.—Well, isn't it an effort to ascertain the truth?

MR. DARROW.—No. It is an effort to show prejudice. Nothing else. Has there been any effort to ascertain the truth in this case? Why not bring in the jury and let us prove it?

THE COURT.—Courts are a mockery—

MR. DARROW.—They are often that, your honor.

THE COURT.—When they permit cross-examination for the purpose of creating prejudice.

MR. DARROW.—I submit, your honor, there is no sort of question that they are not permitted to cross-examine, but all this evidence is to show what we expect to prove and nothing else.

THE COURT.—I will say this. If the defense wants to put their proof in the record, in the form of affidavits, of course they can do that. If they put witnesses on the stand, and the State desires to cross-examine them, I shall expect them to do so.

MR. DARROW.—We except to it, and take an exception.

THE COURT.—Yes, sir. Always expect this court to rule correctly.

MR. DARROW.—No, sir. We do not.

THE COURT.—I suppose you anticipated it.

MR. DARROW.—Otherwise, we should not be taking our exceptions here, your honor. We expect to protect our rights in some other court. Now, that is plain enough, isn't it? Then, we will make statements of what we expect to prove. Can we have the rest of the day to draft them?

THE COURT.—I would not say—

MR. DARROW.—If your honor takes a half day to write an opinion—

THE COURT.—I have not taken—

MR. DARROW.—We want to make statements here of what we expect to prove. I do not understand why every request of the State and every suggestion of the prosecution should meet with an endless waste of time, while a bare suggestion of anything that is perfectly competent on our part should be immediately overruled.

THE COURT.—I hope you do not mean to reflect upon the Court?

MR. DARROW.—Your honor has the right to hope.

THE COURT.—I also have the right to do something else.

MR. DARROW.—All right, all right!

Judge Raulston evidently did not wish to exercise his right without due consideration, and the incident was allowed to pass for the time being. The Court, at any rate, had his temper well under control.

Mr. Bryan insisted that if he could not cross-examine the expert witnesses that, at least, the State was entitled to put rebuttal proof in the record along with the affidavits of the defense. This was denied. The defense made another attempt to get expert testimony out in open court, demanding the right to read the affidavits aloud, but this was overruled. The session ended at 10:30 with every one in a thoroughly bad mood. As this was Friday, the Court adjourned until Monday morning.

On Monday morning Judge Raulston, in a moderate and well considered statement, held Mr. Darrow in contempt of court, and required a bond of \$5,000. This was furnished by Mr. Frank Spurlock, an attorney of Chattanooga. Afterwards, counsel continued the argument as to whether the statements or affidavits of the expert witnesses should be read aloud in court or simply be placed in the record without reading. The point hinged on the practice in Tennessee, and a compromise was finally reached by which Mr. Hays was permitted to make a short statement summarizing the nature of the expert testimony and giving the gist of several of the statements. On the reconvening of the court in the afternoon Mr. Darrow apologized fully to Judge Raulston, who accepted the apology, and the case proceeded. Mr. Hays made his summarizations, and the affidavits of the various scientists and Bible scholars who had been called by

the defense were put in the record. It would be superfluous to give these statements here, however, for they contain little that any well educated person does not already know. And then:

MR. DARROW.—Your honor, before you send for the jury, I think it my duty to make this motion. Off to the left of where the jury sits, and about ten feet in front of them, is a large sign about ten feet long, reading, "Read Your Bible," and a hand pointing to it. The word "Bible" is in large letters, perhaps a foot and a half long, and the printing—

THE COURT.—Hardly that long, I think, General.

MR. DARROW.—Well, we will call it a foot. I guess more, but I might be wrong again, Judge. I move that it be removed.

The matter of the sign is explained by the fact that early in the afternoon the court had adjourned to the lawn outside the court house, the crowd that packed the courtroom making the floor sag dangerously. Judge Raulston moved to a platform built against the court-house wall, and the attorneys got what shade they could from the maple trees near by.

Naturally, Mr. Darrow's plea to remove the sign roused the prosecution to renewed fury. Mr. J. G. Mackenzie characterized counsel for the defense as satellites of the devil, which passed unrebuked by the Court, and remarked further that if the time had come when men were afraid to be reminded that they should read their Bibles "then it is time for us to tear up all of the Bibles, throw them in the fire, and let the country go to hell!" The Court ordered the sign removed, after asserting that, if the Bible was an issue in the case, he personally was on its side.

Mr. Hays now renewed his assertion that there was no such thing as *the* Bible, but that there were many Bibles. In support of this, and to offset the King James version put in evidence by the prosecution, he offered a copy of the Vulgate and also the Hebrew Bible. This move was fought, as usual, but the Court admitted the Bibles none the less. As the original statute and the particular indictment had undoubtedly been based on the King James version, it is difficult to see just what the defense expected to accomplish by this move. The question was academic.

At this juncture came one of the high spots of the trial. The defense called William Jennings Bryan to the stand. It was a most unusual move, useless except for the record; the jury was not present, and Mr. Bryan was not sworn. Mr. Darrow conducted the examination.

Q.—Do you claim that everything in the Bible should be literally interpreted?

A.—I believe everything in the Bible should be accepted as it is given there.

Q.—But when you read that Jonah swallowed the whale—or that the whale swallowed Jonah—how do you literally interpret that?

A.—When I read that a big fish swallowed Jonah—it does not say whale.

Q.—Doesn't it? Are you sure?

A.—That is my recollection of it. A big fish, and I believe it. And I believe in a God who can make a whale and can make a man, and can make both do what he pleases.

Q.—Now, you say, the big fish swallowed Jonah, and he there remained how long—three days—and then he spewed him upon the land. You believe that the big fish was made to swallow Jonah?

A.—I am not prepared to say that. The Bible merely says it was done.

Q.—You don't know whether it was the ordinary run of fish or especially made for that purpose?

A.—You may guess. You evolutionists guess.

Q.—But do you believe He made them—that He made such a fish and that it was big enough to swallow Jonah?

A.—Yes, sir. Let me add: one miracle is just as easy to believe as another.

Q.—Do you believe Joshua made the sun stand still?

A.—I believe what the Bible says. I suppose you mean that the earth stood still.

Q.—The Bible says that Joshua commanded the sun to stand still for the purpose of lengthening the day, and you believe it?

A.—I do.

Q.—Have you an opinion as to whether whoever wrote the Book of Joshua thought the sun went round the earth or not?

A.—I believe that the Bible is inspired. An inspired author, whether one who wrote as he was directed to write, and understood the things he was writing about, I don't know.

Q.—Who inspired it? Do you think whoever inspired it believed that the sun went round the earth?

A.—I believe it was inspired by the Almighty, and He may have used language that could be understood at that time, instead of using language that could not be understood until Darrow was born!

Q.—Mr. Bryan, have you ever pondered what would have happened to the earth if it had stood still?

A.—No. The God I believe in could have taken care of that, Mr. Darrow.

Q.—Don't you know it would have been converted into a molten mass of matter?

A.—You testify to that when you get on the stand. I will give you the chance.

Q.—You believe the story of the flood to be a literal interpretation?

A.—Yes, sir.

Q.—When was that flood?

A.—I would not attempt to fix the date.

Q.—About 4004 B.C.?

A.—That has been the estimate of a man that is accepted to-day. I would not say it is accurate.

Q.—That estimate is printed in the Bible?

A.—Everybody knows, at least I think most of the people know, that was the estimate given.

The 4004 B. C. date was, of course, Bishop Ussher's calculation, which appears in the King James' version. The good Bishop fixed the exact time of creation as 9:00 A. M. on the 23rd of October, 4004 B. C. When this was brought out in court, some depraved individual added in audible tones, "Eastern Standard Time!"

A few minutes later the prosecution objected and Mr. Bryan said:

These gentlemen have not had much chance. They did not come here to try this case. They came here to try revealed religion! I am here to defend it, and they can ask me any question they please.

*(Applause from the crowd.)*

MR. DARROW.—Great applause from the bleachers.

MR. BRYAN.—From those whom you call yokels!

MR. DARROW.—I have never called them yokels!

MR. BRYAN.—That is the ignorance of Tennessee, the bigotry!

MR. DARROW.—You mean who are applauding you?

MR. BRYAN.—Those are the people whom you insult!

MR. DARROW.—You insult every man of science and learning in the world because he does not believe in your fool religion!

THE COURT.—I will not stand for that!

Mr. Darrow pressed his questions on the flood, but Mr. Bryan was a marvel of evasion. He twisted, and turned, and dodged, and hedged and begged the question at every point. This was the sort of game in which he was an adept, and he slipped from beneath Mr. Darrow's thumb with an agility that was remarkable. Mr. Darrow tried his best to get Bryan to admit in so many words that all civilizations of which we have any record date from the time of the flood; tried to pin him down on the exact date of the flood; and indulged in intricate computations to fix the date. It was very difficult going.

Q.—You believe that every civilization on the earth, and every living thing, except possibly the fishes, outside of the ark, was wiped out by the flood?

A.—At that time.

Q.—At that time. And then, whatever human beings, including all the tribes, that inhabited the world, and have inhabited the world, and who run their pedigree straight back, and all the animals, have come onto the earth since the flood?

A.—Yes.

Quizzed on his actual knowledge of antiquity, Mr. Bryan remarked, "I have been more interested in Christians going on right now, to make it much more important than speculation on either the past or the future."

Q.—Don't you know that the ancient civilizations of China are 6000 or 7000 years old, at the very least?

A.—No, but they would not run back beyond the creation, according to the Bible, 6000 years.

Q.—You don't know how old they are. Is that right?

A.—I don't know how old they are, but probably you do. I think you would give the preference to anybody who opposed the Bible, and I give the preference to the Bible.

And now Mr. Darrow got on dangerous ground. He began questioning Bryan on the antiquity of religions, citing Buddhism as an example. This was an excellent opening for the Commoner, who at once launched into a speech on Buddha and Confucius in which he tore them limb from limb. Buddhism he characterized as an "agnostic religion," and so no better than Mr. Darrow. Both sides were getting hot and hotter by this time, and a short examination on the Tower of Babel did not help matters. Again mathematics were called into play, and the building of the Tower being fixed, according to the Bible, at about a century before the flood, Mr. Bryan admitted that, in his opinion, up to 4155 years ago every human being on earth spoke the same language.

Being requested to name any scientist for whom he had any respect Mr. Bryan mentioned George M. Price of Lodi College, Nebraska, and a Mr. Wright of Oberlin. The first of these, Darrow called a mountebank, and Mr. Bryan himself appeared hazy about the second. In the dispute that followed regarding the six days of creation—which Bryan confessed he thought of as periods rather than actual days—it was clear that tempers were slipping all round.

MR. STEWART.—I want to interpose another objection. What is the purpose of this examination?

MR. BRYAN.—The purpose is to cast ridicule on everybody who

believes in the Bible, and I am perfectly willing that the world shall know that these gentlemen have no other purpose than ridiculing every Christian who believes in the Bible!

MR. DARROW.—We have the purpose of preventing bigots and ignoramuses from controlling the religion of the United States, and you know it!

MR. MALONE.—Mr. Bryan seems anxious to get some evidence in the record that would tend to show that our affidavits are not true.

MR. BRYAN.—I am not trying to get anything into the record. I am simply trying to protect the word of God against the greatest atheist or agnostic in the United States. I want the papers to know that I am not afraid to get on the stand in front of him, and let him do his worst!

Every burst of this kind from Bryan brought cheers from the crowd, who were in full sympathy with him. The wrangle precipitated by this outbreak was prolonged, counsel on both sides on their feet and shouting.

MR. HAYS.—May I ask a question? If your contention is correct that this law does not necessarily mean that the Bible is to be taken literally, word for word, is not this competent evidence?

MR. STEWART.—Why could you not prove it by your scientists?

MR. DARROW.—We are calling one of the foremost Bible students.

MR. MALONE.—We are offering the best evidence.

MR. MACKENZIE.—Do you think this evidence is competent before a jury?

MR. DARROW.—I think so.

THE COURT.—It is not competent evidence for the jury!

MR. MACKENZIE.—Nor is it competent in the appellate courts, and these gentlemen would no more file the testimony of Colonel Bryan as a part of the record than they would file a rattlesnake and handle it themselves!

MESSRS. DARROW, HAYS AND MALONE.—We will file it! We will file it! File every word of it!

The examination continued:

Q.—Mr. Bryan, do you believe that the first woman was Eve?

A.—Yes.

Q.—Do you believe that she was literally made out of Adam's rib?

A.—I do.

Q.—Did you ever discover where Cain got his wife?

A.—No, sir. I leave the agnostics to hunt for her!

Q.—Do you believe the story of the temptation of Eve by the serpent?

A.—I do.

Q.—Do you believe that after Eve ate the apple, or gave it to Adam, whichever way it was, that God cursed Eve, and at that time decreed that all womankind thenceforth and forever should suffer the pains of childbirth?

A.—I believe what it says, and I believe the fact as fully—

Q.—And for that reason, every woman born of woman who has to carry on the race, the reason they have childbirth pains is because Eve tempted Adam in the Garden of Eden?

A.—I will believe just what the Bible says. I ask you to put that in the language of the Bible, for I prefer that to your language. Read the Bible, and I will answer.

Q.—All right, I will do that. "And I will put enmity between thee and the woman," that is referring to the serpent?

A.—The serpent.

Q.—"and between thy seed and her seed; it shall bruise thy head, and thou shalt bruise his heel. Unto the woman he said, I will greatly multiply thy sorrow and thy conception; in sorrow thou shalt bring forth children; and thy desire shall be to thy husband, and he shall rule over thee." That is right, is it?

A.—I accept it as it is.

Q.—And you believe that is the reason God made the serpent to go on his belly after he tempted Eve?

A.—I believe the Bible as it is, and I do not permit you to put your language in the place of the language of the Almighty! You read that Bible and ask me questions, and I will answer them. I will not answer your questions in your language!

Q.—I will read it to you from the Bible. "And the Lord God said unto the serpent, Because thou hast done this, thou art cursed above all cattle, and above every beast of the field; upon thy belly shalt thou go, and dust shalt thou eat all the days of your life." Do you think that is why the serpent is compelled to crawl upon its belly?

A.—I believe that.

Q.—Have you any idea of how the snake went before that time?

A.—No, sir.

Q.—Do you know whether he walked on his tail or not?

A.—No, sir. I have no way to know!

Q.—Now, you refer to the bow that was put in the heavens after the flood, the rainbow. Do you believe in that?

A.—Your honor, I think I can shorten this testimony. The only purpose Mr. Darrow has is to slur at the Bible, but I will answer his questions. I will answer it all at once, and I have no objection in the world. I want the world to know that this man, who does not believe in a God, is trying to use a court in Tennessee—

MR. DARROW.—I object to that!

MR. BRYAN.—to slur at it, and while it will require time, I am willing to take it!

MR. DARROW.—I object to your statement! I am examining you on your fool ideas that no intelligent Christian on earth believes!

By this time Mr. Bryan and Mr. Darrow were both standing up and shaking their fists, and the Court was pounding with his gavel. When Judge Raulston could make himself heard, he adjourned court until the next morning.

It was the last day of the trial. The first move was for the Court to order Mr. Bryan's examination of the previous day struck from the records. To this the defense objected and the question was argued, but the Court overruled the objection and the record was cleared of the offending testimony. This step, of course, made it impossible for Mr. Bryan to put Mr. Darrow on the stand in his turn, and in his disappointment Bryan rose to make a peevish and ill-advised statement that he would appeal to the press to vindicate him before the world.

It had been agreed by both sides that a real test of the anti-evolution statute could only be made in a higher court and while the defense had pleaded Not Guilty, it was entirely willing that a contrary verdict should be returned. Accordingly, Judge Raulston charged the jury, but did not direct them to convict. Indeed, his charge seems to have been quite impartial. Mr. Darrow then addressed the jury in a short speech in which his implication that he wanted a verdict of guilty—to enable the defense to appeal—far outweighed his assertion that his client was innocent. The State made no further comment. The jury stayed out nine minutes, and brought back a verdict of Guilty. Whereupon the Court imposed a fine of \$100.

THE COURT.—Have you anything to say, Mr. Scopes, as to why the Court should not impose punishment upon you?

MR. SCOPES.—Your honor, I feel that I have been convicted of

violating an unjust statute. I will continue in the future, as I have in the past, to oppose this law in any way I can. Any other action would be in violation of my ideal of academic freedom—that is, to teach the truth, as guaranteed in our Constitution, of personal and religious freedom. I think the fine is unjust.

The defense at once filed notice of their appeal to the Supreme Court of Tennessee; and Mr. Scopes was held in \$500 bond, which was furnished by the *Baltimore Sun*.

And, now that the fury of battle was over, the exchange of courtesies began. The Court made a speech; the defense made a speech; the prosecution made a speech; the newspaper men made a speech; and a still, small voice spoke up for the public. It was all very pleasant and silly.

The trial was over, but the shooting was not. Mr. Bryan issued still another statement, more peevish and ill-tempered than the last—the man was ill and was to be dead in less than a week—and Mr. Darrow answered him. Mr. Bryan wanted to ask Mr. Darrow nine specific questions, which he would have asked him, among others, had he been able to put him on the stand. These, Mr. Darrow answered.

**MR. BRYAN.**—Do you believe in the existence of God as described in the Bible?

**MR. DARROW.**—I do not know of any description of God in the Bible, although we are informed in one part that He is a spirit. If Mr. Bryan would describe what he meant by God, I could probably tell whether or not I believed in his God. The question as to what was meant by the word was put directly to the counsel for the State, and one of their attorneys, in Mr. Bryan's presence, said that he believed that God was like man, a magnified picture of man. I do not believe in this kind of God. As to the origin of the universe and what is back of it, I do not pretend to

know. I haven't the intimate acquaintance with it that Mr. Bryan has.

MR. BRYAN.—Do you believe that the Bible is the revealed word of God, inspired and trustworthy?

MR. DARROW.—I think there is much of value in the Bible, but I do not believe it is written or inspired by God. I believe it should be taken as any other book, and that the portions in it that are sublime, like such portions of every other great book, might, by a figure of speech, be called inspired. I might even say this of Mr. Bryan's book, "In His Image," if I could find any sublime part.

MR. BRYAN.—Do you believe in the supernatural Christ, foretold in the Old Testament and revealed in the New Testament?

MR. DARROW.—I do not believe that any supernatural Christ was foretold in the Old Testament and revealed in the New. I believe the Christ that was foretold in the Old Testament was a great Jew, who would deliver the Jews from their physical bondage, and nothing else.

MR. BRYAN.—Do you believe in the miracles recorded in the Old and New Testaments? If you believe in some, but not all of them, please name a few of those that you accept and those you reject, with reasons for the same. Do you believe that Christ was conceived by the Holy Ghost and born of the Virgin Mary, as recorded in Matthew and Luke? Do you believe that Christ rose from the dead, as described in the four Gospels?

MR. DARROW.—I do not believe in miracles. I believe the universe acts, and has always acted, according to immutable laws, and that whatever may be back of the universe, it has never violated these laws.

MR. BRYAN.—Do you believe in the immortality of the soul?

MR. DARROW.—I have been searching for proof of this all my life, with the same desire to find it that is incident to every living thing, but I have never found any evidence on the subject.

MR. BRYAN.—If you believe in evolution, at what point in man's

descent from the brute is he endowed with hope, and the promise of a life beyond the grave?

MR. DARROW.—I have no knowledge on the question of when man first believed in life beyond the grave. I am not at all sure whether some other animals have not the same hope of future life. Its origin may have arisen in vivid dreams concerning the return of the dead or, from all I know, from actual evidences of the return of the dead.

The trial had closed on Tuesday, and on the following Sunday afternoon William Jennings Bryan died, worn out by a lifetime of fighting. Whatever one may think of the man's mental processes, one must admit that he died as he lived with his colors lashed to the mast.

The last word is with Mr. Darrow who said:

I fancy that the place where the Magna Charta was wrested by the Barons of England was a very small place, probably not as big as Dayton. But events come along, as they come along. I think this case will be remembered because it is the first case of this sort since we stopped trying people in America for witchcraft, because here we have done our best to turn back the tide that has sought to force itself upon this modern world, of testing every fact in science by a religious dictum.

The important thing for the defense now, was the appeal. Only a superior court could finally decide whether the statute was really constitutional. Argument on the appeal was heard before the Supreme Court of Tennessee in June of 1926. The atmosphere was quiet and dignified, but tense. It was clear that the court wanted to prevent the case from going to the Supreme Court of the United States. Tennessee had made a fool of herself and knew it. The less pub-

licity now, the better. The gist of the Supreme Court's decision was that the law was constitutional, but that the fine had been improperly imposed by the judge. This left the defense with no grounds for further action. More, the court directed the Attorney General to *nolle prosse* all proceedings in the case. In effect, this meant that the statute was not intended to be enforced. Hence, it is perfectly safe to "bootleg" evolution in Tennessee today.

Not long after this fiasco, an anti-evolution measure was introduced in the Kentucky legislature, but it was laughed out of existence when a member proposed a companion statute that would compel all water in Kentucky to run both up and down hill. Truly, the ways of democracies are strange, and legislation in the hands of the unfitted is like a tool-chest in the proud possession of a three-year-old child.

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THE END

